United States Court of Appeals

for the Second Circuit

APPELLANT'S APPENDIX

77-1019

To be Argued by
JURIS G. CEDERBAUMS
(15 Minutes)

B
P/S

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

DOCKET NO. 77 - 1019

UNITED STATES OF AMERICA
Appellee

-v-

DOMINIQUE ORSINI
Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK

APPENDIX TO BRIEF FOR APPELLANT DOMINIQUE ORSINI

GINO E. GALLINA, ESQ.
Attorney for Appellant
Dominique Orsini
30 Broad Street
New York, New York 10004
(212) 425-1060

By:

JURIS G. CEDERBAUMS

MAR 1 1977
SECOND CIRCUIT

PAGINATION AS IN ORIGINAL COPY

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3. Judgment and sentence ----------

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5. Affidavit of Gallina and Brenner ----------

6. Affidavit of Louis G. Fields, Jr. ----------

7. Memorandum and Order (Bramwell, J.) ----------
dated September 20, 1976

8. Memorandum and Order (Bramwell J.)
dated September 28, 1976----------

9. Transcript of Toscanino hearing before
Bramwell, J. ----------

orm No. 100

NAL DOCKET

74 CR 442

UNITED STATES OF AMERICA

- against -

GUILLERMO ADAME,
LUIS ADAME,
MERCEDES ADAME,
FREDERICO BECERRA,
JORGE BONNEMAISON,
MARIA BONNEMAISON,
MARIA DE BONNEMAISON,
JOSE DELLACQUA also known as
Oscar Smith, also known as
"El Gringo", also known as
"El Tio",
ALBERTO DIAZ,
MARIA ANGELICA DIAZ FEIJOO
also known as Carmen
Rodriguez Diaz, also known
as "Chiche",
DELMA DUARTE,
RENE DUARTE also known as
"El Chico Rene",
MIGUEL GARCIA also known as
"Miguelito", also known as
"Scarface",
CARLOS GONZALEZ also known as
Carlos Matadero,
RICARDO KRIMKER also known as
"Bebe",
SEGUNDO LOPEZ,
JAIME MORAQUES also known as
Jorge Martinez-Diaz,
RAFAEL ALFREDO MURILLO,
RAMON NOVOA also known as
"Indio Moncho",
DOMINIQUE ORSINI also known as
"Domingo",
VINCENTE OTERO also known as
"Cacho",
ORLANDO DA SILVA PINHEIRO
also known as Luis Carlos
de Almedia,
BENJAMIN VARA-PUERTAS also known
as Eusebio Gonzalez Conde,
VICTOR MCNAMARA-RIQUELME also
known as "El Guaso Renca",
LEONARDO ROMERO also known as
"Nato",
VINCENTE SANTOS,
YOLANDA SARMIENTO also known
as "Chola",
PEDRO ZURDO, and
JOHN DOE also known as
"Angelito",

Defendants.

C. P
RIM

73 CR 879

THE UNITED STATES

vs.

ATTORNEYS

For XXX ALBERTO DIAZ-
Martin Elefant-16 Court St.
Brooklyn 624-2240
deft. Orsini:
Court apptd counsel:
Murray Cutler, 16 Court St
Brooklyn, NY. TR5-1661
For Defendant: of counsel:
Gino Gallina, 30 Broad St.
NYC. 944-1550
Sarmiento-Howard Jacobs
401 Bdway - 431-3710
Ivan Fisher-410 Park Avenue
N.Y. 10022 355-238

d import heroin into the United States

ABSTRACT OF COSTS	AMOUNT		CASH RECEIVED AND DISBURSED			
			DATE	NAME	RECEIVED	DISBURSED
ne,			12-7-74	Notice of Appeal (Orsini)		
erk,						
arshal,						
torney,						
mmissioner's Court,						
itnesses,						

DATE	PROCEEDINGS
4-74	Before BARTELS,J.- Indictment filed- ordered sealed by the court
	Bench warrants ordered.
374	Before PLATT,J.- Case called- Indictment ordered unsealed by the Court-
	deft MARIA ANGELICA DIAZ FEIJOO produced on a bench warrant- Legal Aid
	assigned as counsel- Albert Boyne sworn in as interpreter-Deft arraigned
	and enters a plea of not guilty- Bail set at $100,000.00 Surety Bond-
	Pre-trial conference schedules for 9-20-74 at 2:00 P.M.
0-74	Before PLATT,J.- Case called- Deft and counsel present- Adjd to 9-25-74
	(DIAZ, FEIJOO, RODRIGUEZ DIAZ)
5-74	Before PLATT, J - case called - deft & counsel present - motion for
	continuance (deft Maria Angelica Diaz Feijoo) adjd to Oct.11, 1974.
	Affidavit ordered sealed.

DATE	PROCEEDINGS	CLERK'S FEES PLAINTIFF	CLERK'S FEES DEFENDANT
/11/74	Before PLATT,J.- Case called- Deft and counsel Edward Kelly of Legal Aid present- Case adjd to 11/1/74 at 10:00 A.M. (MARIA ANGELICA DIAZ FEIJOO)		
/25/74	Before PLATT,J.- Case called- Adjd to 11/1/74 at 10:00 A.M. (FEIJOO)		
/74	Before PLATT,J.- Case called- Deft and counsel present- Interpreter present- Adjd to 11/15/74 (FEIJOO)		
5/74	Before PLATT,J.- Case called- Deft and counsel present- M. Menda sworn in as interpreter- Adjd to 11/22/74 for disposition(FEIJOO)		
31-75	Before PLATT, J - case called - deft & counsel E.Kelly of Legal Aid present (FEIJOO) On motion of AUSA/David De Petris the Indictment is dismissed.		
-31-75	By PLATT, J - Order of dismissal filed (FEIJOO)		
-12-75	Bench Warrant Issued as to deft DIAZ		
/2/75	Before BRAMWELL,J.- Case called- Deft ALBERTO DIAZ present with interprete court appoints Martin Elefant as counsel for deft- deft arraigned and ente a plea of not guilty- Bail contd- 30 days for motions		
/2/75	By BRAMWELL,J.- Order appointing counsel filed(ALBERTO DIAZ)		
2/75	Financial affidavit filed		
2-75	~~Indictment~~, Bench Warrant, Affidavit of David De Petris, affidavit of Wladimir Banderas, Grand Jury Testimony of Wladimir Banderas & Louis Serafin Torres Moreno pertaining to USA vs. Dominique Orsini filed.		
8-14-75	Bench Warrant, Affidavit of David De Petris, affidavit of Wladimir Banders and Grand Jury Minutes testimony of Wladimir Banderas and Dennis J. Perry pertaining to Victor McNamara-Riquelme , filed.		
-14-75	Bench Warrant Issued (RAMON NOVOA)		
-25-75	Before BRAMWELL, J - case called - deft ORSINI brought into court on a bench warrant - deft present without counsel - Miss Paulette Harary sworn as interpreter - court enters plea of not guilty for deft. Bail fixed at $2,500,000.00 surety bond.		
8-26-75	Before BRAMWELL, J - case called - deft Orsini present with Interpreter Paulette Harary - court assigns Murray Cutler as counsel for deft Orsini- oral application for reduction of bail and bail is reduced to $1,500,000.00 surety bond - 30 days for motions is granted.		
8-26-75	By Bramwell, J - Order filed appointing counsel for deft Orsini.		
5/75	BeforeBRAMWELL,J.- Case called- Deft RAMON NOVOA and counsel Frederick Schwartz present-Deft waives reading of indictment and enters a plea of not guilty-bail fixed at $30,000.00 surety bond-deft to put up deed to house at 18 Padial Street, Caguar Puerto Rico-30 days for motions is granted		

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CRIMINAL DOCKET

DATE	PROCEEDINGS
9-16-75	Before BRAMWELL, J - case called - deft NOVOA & counsel F. Schwartz present - application for extension of bail to Puerto Rico - no oppositon from Govt. Application to include bail limits to Puerto Rico is granted.
9-26-75	Magistrates proceedings filed received from U.S. District Court, San Juan, Puerto Rico as to deft Ramon Novoa.
10/1/75	Notice of motion for discovery-bill of particulars-etc. filed-ret. 10/10/75 (ORISINI)
10/3/75	Notice of motion for severance, etc. filed (NOVOA) ret.Oct.10,1975
10/3/75	75 M 1576 is inserted in CR file.
10/10/75	Before BRAMWELL,J.-Case called- Deft ORSINI and counsel and interpreter present-Court relieves Mr Cutler as counsel- deft has retained Mr. Cutler (CJA) as counsel-motion granted in part and denied in part-reduction of bail denied-case adjd to 10/17/75 at 10:00 A.M. for hearing
10-17-75	Affidavit of David De Petris filed.
10-17-75	Before BRAMWELL J - case called - defts atty Murray Cutler failed to appear - case adjd to Oct. 24, 1975.
10-20-75	Supplemental Affidavit of Dominique Orsini filed.
10/22/75	Bench warrants issued for all defts except for defts Feijoo, Diaz, Orsini and Novoa
10-24-75	Before BRAMWELL, J - case called - deft Orsini & counsel Murray Cutler present - by Gina Gallina of counsel - M.Mensa sworn as interpreter - defts motion to dismiss indictment, etc. deft through his counsel and interpreter waives speedy trial rule and case adjd to Nov. 20, 1975 for evidentiary hearing at 10:00 am.
10-30-75	Govts Notice of Readiness for Trial filed (Orsini)
10/30/75	By BRAMWELL,J.- Decision and Order filed that court will hold an evidentiary hearing to termine validity of deft Orisni's claims
11/19/75	Notice of motionf for an order granting permission for deft Orsini's atty to take foreign depositions, etc. and memorandum of law filed
11-20-75	Before BRAMWELL, J - case called - deft ORSINE & counsel Gino Gallina present - Toscanino hearing begun - Miss Libya Clancy sworn as interpreter - hearing contd to Nov. 21, 1975 at 11:00 am.
11-21-75	Subpoena to Produce document filed (retd to Chambers)
11-21-75	Before BRAMWELL, J - case called - deft Orsini & counsel Gino Gallina present - Dr. George Greco sworn as interpreter for deft Toscannino Hearing resumed - subpoena to produce documents directed to U.S. Dept. of State is vacated by the court and so ordered and filed.

DATE	PROCEEDINGS
	Hearing contd to Dec.3, 1975.
2/3/75	Before BRAMWELL,J.- Case called- Deft ORSINI and counsel present- hearing adjd to 1/15/76 at 10:00 A.M.-deft waives right to be present at any foreign deposition
/3/75	Waiver of right to be present at taking of depositions, etc. filed(ORSINI
5/75	Stenographers Transcript dated 11/20/75 filed
15-76	Before BRAMWELL J - case called - deft Dominique Orsine and counsel Gino Gallina & interpreter Dr. George Greco sworn - hearing contd - hearing contd to 2-10-76 at 10:00 am.
9/76	Stenographers Transcript dated 10/24/75 filed
1/76	Stenographers Transcript dated 12/3/75 filed
3/76	Stenographers Transcript dated 1/15/76 filed
30/76	Affirmation of Frederick Schwartz filed
30-76	Before BRAMWELL, J. - Case called. Deft Ramon Novoa not present. Counsel Frederick Schwartz ill. Affirmation filed & motion adj'd to 2-13-76.
30-76	Letter from Gino E. Gallina filed.
-30-76	By BRAMWELL, J -- Memorandum and Order filed on motion for Bill of Particulars granted and denied as indicated.(ORSINI)
0-76	Letter from Gino E. Gallina dtd 2-3-76 filed.
0-76	By BRAMWELL, J. - Memorandum and Order dtd 2-10-76 denying motions by Dominique Orsini from letter dtd 2-3-76 and clarification of order of 1-30-76 filed(see order).
0/76	Before BRAMWELL,J.- Case called- deft and counsel present- hearing adjd to 2/13/76 at 11:30 A.M. (DOMINQUE ORSINI)
10-76	Before BRAMWELL, J - case called - deft ALBERTO DIAZ & counselMartin Elefant present - Interpreter P.Harary sworn - On motion of AUSA David De Petris the indictment is dismissed.Motion granted.
0-76	By BRAMWELL, J - Order of dismissal filed (ALBERTO DIAZ)
3/76	Before BRAMWELL,J.- Case called- Motion adjd to 2/20/76 on consent
3/76	Before BRAMWELL,J.- Case called- Court agreeable to take depositions in Paris and in Senegal- Deft agrees to pay expenses of prosecution- deft to submit order on notice
8-76	By BRAMWELL, J - Order filed granting leave to take foreign depositions and for issuance of commissions (2 Orders)
0/76	Affirmation of Frederick Schwartz filed
20/76	Before BRAMWELL,J.- case called- adjournment to 3/12/76 granted on conser
12/76	Before BRAMWELL,J.- case called- adjd to 3/26/76 on consent(NOVOA)
15-76	2 stenographers transcripts filed (pgs 1 to 21)

CRIMINAL DOCKET

DATE	PROCEEDINGS
3/26/76	Before BRAMWELL,J.- Case called- omnibus motion adjd to 4/9/76 on consent at 10:00 A.M.(RAMON NOVOA)
4-9-76	Before BRAMWELL, J - case called - omnibus motion adjd to 4-23-76 on consent (Novoa)
4/21/76	By BRAMWELL,J.- Order filed granting leave to take foreign depositions and for issuance of commissions, etc. (DOMINIQUE ORSINI)
/23/76	Before BRAMWELL,J.- Case called- motion of 3/26/76 adjd to 4/30/76 at 10:00 A.M. on consent (NOVOA)
/30/76	Before BRAMWELL,J.- Case called- deft Novoa's motion adjd to 5/14/76 on consent
/30/76	Affidavit of Frederick Schwartz filed
5-4-76	Stenographers transcript filed dated 8-26-75 (Orsini)
5-6-76	Before BRAMWELL, J - case called for status report (Orsini) attys advised of discovery - Parties to submit findings of fact and conclusions of law - court advised re depositions in Spain.
/14/76	Before BRAMWELL,J.- Case called- adjd to 5/21/76 at 10:00 A.M. (NOVOA)
/21/76	Before BRAMWELL,J.- Case called-adjd to 5/28/76 (NOVOA)
5-27-76	Notice of motion filed re deletion in the indictment of the use of also known as Indio Moncho etc.; a severance and separate trial ; discovery; abuse of wire-tap etc.& Memorandum of Law filed in support of motions.
/27/76	Before BRAMWELL,J.- Case called- deft SARMIENTO and counsel present- interpreter sworn- deft arraigned and enters a plea of not guilty- bail fixed at $2,500.00- case adjd to 6/7/76 for all purposes
/27/76	Notice of appearance filed(YARMIENTO)
-28-76	Before BRAMWELL, J.- Case called & adj'd to 6-4-76 at 10A.M.
/4/76	Before BRAMWELL,J.- Case called- motion submitted of 5/27/76 (NOVOA)
-7-76	Notice of appearance filed (deft Sarmiento)
6-7-76	Before BRAMWELL, J - case called - defts Sarmiento & Orsini and counsels present - Albert Boyne sworn as interpreter - court relieves Ivan Fisher as counsel for deft Sarmiento - Notice of appearance of Howard Jacobs as counsel for deft Sarmiento filed- case adjd to June 15, 1976 for all purposes.
6-7-76	Notice of appearance filed (Sarmiento)
6-8-76	Memorandum of Law filed in support of motion to take foreign depositions (Orsini)

BEST COPY AVAILABLE

DATE	PROCEEDINGS
/10/76	Notice of motion for an order granting permission to take foreign deposition etc. filed ret. 6/18/76 (ORSINI)
1-76	Notice of motion filed (ret. June 18, 1976 Orsini) for an order reducing defts bail.
-14-76	Stenographers transcript filed dated May 27, 1976 (Sarmiento)
14-76	Stenographers transcript filed dated May 6, 1976 (Orsini)
-16-76	Before BRAMWELL, J - case called - defts & attys present - case adjd to 9-7-76 at 10:00 am for trial.
18-76	Before BRAMWELL J - Case called & adj'd to 7-2-76 at 10 A.M. (Orsini).
23-76	By BRAMWELL, J - Decision and Order filed on defts (RAMON NOVOA) for severance, seeking deletion in the name etc. Order pursuant to Rule 16, motion to delete from the indictment the use of aka "Indio Mancho" is denied; motion for severance is denied; Discovery motion granted and denied as indicated; omnibus motion granted & denied in part (see Decision)
25-76	Stenographers transcript filed dated June 16, 1976.
25-76	Govts Memorandum filed in opposition to defts motion for permission to take foreign depositions (ORSINI)
30-76	Reply affidavit filed of Gino Gallina, counsel for deft Orsini
6-76	Before BRAMWELL J - Case called. Motion for reduction of bail withdrawn.
8-76	By BRAMWELL, J. - Order granting leave to take Foreign Depositions and for issuance of Commissions, as of 7/7/76.
-76	By BRAMWELL, J. - Order granting leave to take foreign depositions and for issuance of commissions filed.
2-76	Stenographers transcript filed dated July 6, 1976
/76	Before BRAMWELL, J.- Case called. Deft Sermiento & Counsel H. Jacobs present Deft through Interpreter Waives Speedy Trial rule on advise of Counsel. Case adjourned to 9/7/76 for trial. Excludable Delay - Start Date 5/28/76 Still in effect. (YOLANDA SARMIENTO
23/76	~~Notice of Readiness for trial filed. (YOLAND SARMIENTO)~~
6/76	Before BRAMWELL, J. - Case called for Toscannino hearing. Deft Orsini & Counsel Gino Gallina & Interpreter present. Hearing begun. Both sides to submi findings of Fact & Conclusions of Law. Hearing adjd without date. (DOMINIQUE O
76	Supplemental affidavit for Gino E. Gallina filed. (ORSINI)
/76	By BRAMWELL, J. - Order granting leave to take foreign depositions and for issuance of commissions filed. (ORSINI)
76	Stenographers transcript filed dated July 26, 1976 (ORSINI)
6	Before BRAMWELL, J. - Case called. Defts Sarmiento, Novoa & Orsini present, counsels. Trial adjd to 9/27/76 at 10:00 a.m. for trial consent. Excludable D still in effect.

R--492

CRIMINAL DOCKET

DATE	PROCEEDINGS
9-10-76	Stenographers transcript filed dated 9-1-76.
9-10-76	Notice of motion filed, ret. 9-17-76, for an order continuing the Toscanino hearing, for the introduction of further oral and documentary evidence, etc.
/14/76	Notice of Motion returnable 9/17/76 with affidavit in support of motion for an order permitting the introduction of the video-taped deposition of Father Simon LeClef at the trial of this case, for an order permittin the taking of the deposition of one Juan C. Sosa in Argentina, and for such other and further relief as the Court deems just and proper. (DOMINQUE ORSINI). Motion sent to chambers.
16/76	Notice of Motion to Quash Subpoena with memorandum in support of motion of Anthony Marro to Quash Subpoena, & affidavit of Anthony Marro, John B. Kuhns, & Richard M. Cooper filed. Memorandon on disclosure of confidential sources in camera also filed. All papers forwarded to chambers; returnable 9/17/76. (DOMINIQUE ORSINI, ET AL.
16/76	Proposed findings of fact & conclusions of law of Deft Dominique Orsini filed and forwarded to chambers.
/17/76	Before BRAMWELL, J. - Case called. Motion to dismiss is denied. Settle order on Notice.(DAVID A. DEPETRIS)
9/20/76	before BRAMWELL, J. - Case called. Defts motion for an order permitting Video Tape Depostions of Father Simon Le Cleft & Juan Carlos Sosa etc - Motion denied. Lybia Clancy swrorn as Interpreter for deft Orsini.
/20/76	Before BRAMWELL, J. - Case called. Toscanino Hearing begun. Hearing continued to 9/21/76 at 10:00 a.m. (ORSINI).
/.20/76	Before BRAMWELL, J. - Case called. Hearing on motion to quash subpoena, etc., Hearing begun. Decision reserved. Court renders decision at 2:05 p.m. on moiton to quash subpoena is hereby quashed as to Mr. Anthony Marro. Settle order and notice. Hearing concluded.(ORSINI).
9-21-76	Before BRAMWELL J - Case called. Toscanino hearing continued. Both sides rest. Both sides t o submit findings of fact conclusion law. Decision reserved. Hearing concluded.
/22/76	Stenographers transcript dated 9/21/76 filed.(DOMINIQUE OSSINI).
9-28-76	Govts Proposed Findings of Fact and Conclusions of Law filed received from Chambers.
9-27-76	Before BRAMWELL, J - case called - defts present with attys - Frank Lopez sworn as interpreter - adjd to 9-28-76 at 10:am. case as to Ramon Novoa marked ready & passed - bail contd.

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DATE	PROCEEDINGS
-28-76	Before Bramwell, J - case called - deft Orsini & counsel Gino Gallina & interpreter Mrs. M.Mensa present - decision rendered on Toscanino hearing etc. defts motion for dismissal of indictment is denied and it is so ordered. Deft withdraws his plea of not guilty and having been advised of his rights by the court and on his own behalf enters a plea of guilty as charged - bail contd and sentence adjd without date - case as to deft Sarmiento adjd to Oct. 5, 1976
29-76	Stenographers transcript dated 9-28-76 filed
-1-76	By BRAMWELL,J.-Order filed quashing subpoena served on behalf of deft Orsini on Anthony Marro.
5/76	Before BRAMWELL, J.- Case called. Deft & Counsel present. Superseding Infor filed. Waiver of Indictment signed. Deft arraigned and having been advised o his rights by the Court and on his own behalf enters a plea of guilty as cha Court finds that there is a factual basis for the plea. Bail continued and se adjd without date.(RAMON NOVOA).
/76	SUPERSEDING INFORMATION FILED (S). (RAMON NOVOA).
-76	Before BRAMWELL,J.-Case called-Deft Sarmiento not present-Counsel Howard Jacc present-Case adjd to 10-7-76 at 10 AM for pleading.
/76	Before BRAMWELL, J. - Case called. Deft Yolanda Sarmiento & Howard Jacobs pre Case adjd to 10/15/76 at 12:00 noon. 10/7/76
12-76	Stenographic transcript dated 9-7-76 filed.
15-76	Case Called. Deft Yolanda Sarmiento & Counsel H. Jacobs, present with Paulette Harrary sworn as Interpreter. Case adjourned to 10-29-76 at 11:30 for all purposes. 10-15-76 T
9-76	Before Bramwell, J.- Case Called. Deft. Sarmiento & Counsel Harold Jacobs present, with interpreter Mr. Libya Clancy sworn. Case adjd. to 11-1-76 at 10:00 A.M. Bail continued. (Sarmiento)
-76	Before Bramwell, J.- Case Called. Deft. & Counsel & Interpreter Paulette Harary sworn. Deft. to submit for physical examination. Y.S. atty. to submit order - Case adjd. without date. (SARMIENTO) A
-76	By Bramwell, J.- Order directing competency examination - filed. (SARMIENTO)
-76	Order returned and filed - executed. (SARMIENTO)
4/76	Before BRAMWELL, J.- Case called. Deft and counsel present. Deft withdraws her plea of not guilty and having been advised of her rights by the Court and on her own behalf enters a plea of guilty as charged. Court finds that ther is a factual basis for the plea. Bail continued and sentence adjd without d (YOLANDA SARMIENTO).

74 CR 492

CRIMINAL DOCKET

DATE	PROCEEDINGS
11-11-76	By BRAMWELL, J - Findings of Fact Conclusions of Law and Order filed denying deft(Orsini) motion to dismiss the instant indictment on Toscanino grounds .(Order signed by Judge Bramwell on Sept. 28, 1976 but received in Clerks Office for filing on Nov. 11, 1976)
11-11-76	By BRAMWELL, J - Memorandum and Order filed on the grounds of irrelevancy and immateriality as well as upon the grounds of the First Amendment protection, the subpoena duces tecum issued to Mr. Marro is hereby quashed (order signed on 9-20-76 received in Clerks office for filing on Nov. 11, 1976)
12-15-76	Stenographers transcript filed dated 11-4-76 (Sarmiento)
12-17-76	Before Bramwell, J.-- Case Called. Deft. & Counsel present. Interpreter sworn. Deft. sentenced to imprisonment for a period of ten (10) years as charged. (DOMINIQUE ORSINI)
12-17-76	Judgment and Commitment filed. Certified Copies to Marshal and Probation. (DOMINIQUE ORSINI)
12-21-76	Certified Copy of Judgment and Commitment returned and filed. Deft. delivered on 8-25-76 to M.C.C.
12/27/76	Notice of Appeal filed.(ORSINI)
12/27/76	Docket entries and duplicate of Notice of Appeal mailed to the C c Deft (ORSI
1-7-77	Before BRAMWELL, J. - Case called. Deft Novoa & counsel present. Sentence adj'd to 1-12-77.
1-12-77	Before Bramwell, J - case called - deft NOVOA & counsel E.Panzer present - deft sentenced to imprisonment for 1 year and 1 day as charged - On motion of AUSA David De Petris the original indictment is dismissed. Motion granted.
1-12-77	Judgment and commitment filed - certified copie s to Marshal (RAMON NOVOA)
1-12-77	Certified Copy of Judgment and Commitment returned and filed from Marshal. Deft. delivered on 1-12-77 to M.C.C., New York. (RAMON NOV
1/14/77	Before BRAMWELL, J - Case called. Deft present without counsel. Def arraigned and the Court enters a plea of not guilty. Court to assig counsel. Bail fixed at $250,000.00 Surety Bond. Case adjd to 1/17/77 assignment of counsel. (VICTOR MCNAMARA-RIQUELME)
1/14/77	Bench warrant returned and filed executed.(VICTOR MCNAMARA-RIQUELME)
1-17-77	Affidavit of RICHARD COOPER filed

D. C. 101

DATE	PROCEEDINGS
17-77	Deft Orsini's supplemental proposed Findings of Fact and Conclusions of Law filed and Memorandum and Order filed dated 9-20-76 signed by Judge Bramwell.
/17/77	Stenographers transcript dated 9/20/76 ,Letter to Judge Bramwell dated 9/23/76 from Gino Gallina, Esq, Re: special article by the Daily News, Memorandum on disclosure of confidential sources in camera, affadavit of Louis G. Fields, Affidavit of Gino E. Gallina, Affadavit of John B. Kuhns affidavit in opposition to motion to quash subpoena, Letter to Judge Bramwel dated 2/12/76 from AUSA - DePetris re: response to the request for depositions in various foreign countries, and Letter dated 6/17/76 to Judge Bramwell from AUSA DePetris filed. (ORSINI).
17-77	Before Bramwell, J.- Case Called. Deft. & Counsel present. Order appointin Counsel signed. 2-18-77 for Motions and Case adjd. to 3-7-77 for Trial at 10:00 A.M. Bail continued. (VICTOR McNAMARA-RIQUELME)
17-77	By Bramwell, J.- Order appointing Counsel filed. (VICTOR McNAMARA-RIQUELM
17-77	Before Bramwell, J.- Case Called. Deft. & Counsel present. Sentence adjd. to 1-21-77 at 10:00 A.M. (YOLANDA SARMIENTO)

DATE 1/18 77

BY Joe Smith

BF:GH:sd
F. #741987

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- X

UNITED STATES OF AMERICA

- against -

GUILLERMO ADAME,
LUIS ADAME,
MERCEDES ADAME,
FREDERICO BECERRA,
JORGE BONNEMAISON,
MARIA BONNEMAISON,
MARIA DE BONNEMAISON,
JOSE DELLACQUA also known as
Oscar Smith, also known as
"El Gringo", also known as
"El Tio",
ALBERTO DIAZ,
MARIA ANGELICA DIAZ FEIJOO
also known as Carmen
Rodriguez Diaz, also known
as "Chiche",
DELMA DUARTE,
RENE DUARTE also known as
"El Chico Rene",
MIGUEL GARCIA also known as
"Miguelito", also known as
"Scarface",
CARLOS GONZALEZ also known as
Carlos Matadero,
RICARDO KRIMKER also known as
"Bebe",
SEGUNDO LOPEZ,
JAIME MORAQUES also known as
Jorge Martinez-Diaz,
RAFAEL ALFREDO MURILLO,
RAMON NOVOA also known as
"Indio Moncho",
DOMINIQUE ORSINI also known as
"Domingo",
VINCENTE OTERO also known as
"Cacho",
ORLANDO DA SILVA PINHEIRO
also known as Luis Carlos
de Almedia,
BENJAMIN VARA-PUERTAS also known
as Eusebio Gonzalez Conde,
VICTOR MCNAMARA-RIQUELME also
known as "El Guaso Renca",
LEONARDO ROMERO also known as
"Nato",
VINCENTE SANTOS,
YOLANDA SARMIENTO also known
as "Chola",
PEDRO ZURDO, and
JOHN DOE also known as
"Angelito",

Defendants.

- X

BF:GH:sd
F. #741987

Cr. No. _____
(T. 21 U.S.C., §173
T. 21 U.S.C., §174))

392

FILED
IN CLERK'S OFFICE
S. DISTRICT COURT E.D. N.Y.
★ JULY [illegible] ★
TIME A.M. .....
P.M. .....

THE GRAND JURY CHARGES:

1

On or about and between the 1st day of January 1968, and the 1st day of April 1971, both dates being approximate and inclusive, within the Eastern District of New York and elsewhere, GUILLERMO ADAME, LUIS ADAME, MERCEDES ADAME, FREDERICO BECERRA, JORGE BONNEMAISON, MARIA BONNEMAISON, MARIA DE BONNEMAISON, JOSE DELLACQUA also known as Oscar Smith, also known as "El Gringo", also known as "El Tio", ALBERTO DIAZ, MARIA ANGELICA DIAZ FEIJOO also known as Carmen Rodriguez Diaz, also known as "Chiche", DELMA DUARTE, RENE DUARTE also known as "El Chico Rene", MIGUEL GARCIA also known as "Miguelito", also known as "Scarface", CARLOS GONZALEZ also known as Carlos Matadero, RICARDO KRIMKER also known as "Bebe", SEGUNDO LOPEZ, JAIME MORAQUES also known as Jorge Martinez-Diaz, RAFAEL ALFREDO MURILLO, RAMON NOVOA also known as "Indio Moncho", DOMINIQUE ORSINI also known as "Domingo", VINCENTE OTERO also known as "Cacho", ORLANDO DA SILVA PINHEIRO also known as Luis Carlos de Almedia, BENJAMIN VARA-PUERTAS also known as Eusebio Gonzalez Conde, VICTOR MCNAMARA-RIQUELME also known as "El Guaso Renca", LEONARDO ROMERO also known as "Nato", VINCENTE SANTOS, YOLANDA SARMIENTO also known as "Chola", PEDRO ZURDO, and JOHN DOE also known as "Angelito", the defendants together with Wladimir Banderas, Luis Serafin Torres-Moreno, Emilio Quintero, Felix Martinez, Ricardo Jastrzebski and Luis Alfredo Ureta Morales, named herein as co-conspirators but not as defendants, and others known and unknown to the Grand Jury, wilfully, knowingly and unlawfully did combine, conspire, conederate and agree together and with each other to violate Sections 173 and 174 of Title 21, United States Code.

-2-

1. It was part of said conspiracy that the defendants and co-conspirators fraudulently and knowingly would import and bring into the United States large quantities of heroin and cocaine, narcotic drugs, contrary to law.

2. It was further a part of said conspiracy that the defendants and co-conspirators wilfully, knowingly and unlawfully would receive, conceal, buy, sell and facilitate the transportation, concealment and sale of large quantities of heroin and cocaine, narcotic drugs, after the narcotic drugs had been imported and brought into the United States, knowing the same to have been imported and brought into the United States contrary to law.

-3-

3. It was further a part of said conspiracy that the defendants and co-conspirators would conceal the existence of the conspiracy and would take steps designed to prevent disclosure of their activities.

In furtherance of the conspiracy and to effect the objects thereof, the following overt acts, among others, were committed within the Eastern District of New York and elsewhere:

OVERT ACTS

1. On or about September 19, 1968, defendant MORAQUES carried approximately two (2) kilograms of cocaine from Tijuana, Mexico to San Ysidro, California.

2. In or about July, 1969, in Marseilles, France, defendants VARA PUERTAS and ZURDO delivered seventeen (17) kilograms of heroin to co-conspirator Jastrzebski.

3. On or about July 10, 1969, defendant DELMA DUARTE transported approximately eleven (11) kilograms of heroin from Tijuana, Mexico to San Ysidro, California.

4. In or about July, 1969, in Manhattan, New York, co-conspirator Banderas delivered approximately three (3) kilograms of heroin to defendant GARCIA.

5. In or about August, 1969, in Buenos Aires, Argentina, defendants MURILLO and KRIMKER met with co-conspirator Torres-Moreno.

6. In or about September 1969, co-conspirators Banderas and Torres-Moreno travelled by airplane from John F. Kennedy International Airport, Queens, New York to Paris, France.

7. In or about September, 1969, in Marseilles, France, defendant ALBERTO DIAZ delivered approximately thirty (30) kilograms of heroin to co-conspirators Banderas and Torres-Moreno in exchange for approximately One Hundred Five Thousand Dollars ($105,000.00).

8. On or about May 11, 1970, defendant DELLACQUA met with co-conspirator Banderas and others at 310 E. 55th Street, Manhattan, New York.

9. In or about September, 1970, in Montevideo, Uruguay, defendant MURILLO introduced defendant OTERO to co-conspirators Torres-Moreno and Banderas.

10. In or about October, 1970, in Martinez, Argentina, defendants MURILLO, KRIMKER and ORSINI met with co-conspirator Banderas. (Title 21, United States Code, Sections 173 and 174).

A TRUE BILL.

FOREMAN.

UNITED STATES ATTORNEY

Form DJ-195
(Ed. 2-7-66)

No. _____ AR 192

UNITED STATES _____ COURT

_____ District of _____

_____ Division

THE UNITED STATES OF AMERICA

vs.

[illegible] et. al.

Defendants.

INDICTMENT

Title 21, United States Code,
Section 173 and 174

A true bill,

_____
Foreman.

Filed in open court this _____ *day*

of _____, *A. D. 19*_____

_____
Clerk.

*Bail, $*_____

_____

G.L. [illegible] AUSA GPO 902-482

596-341[illegible]

United States of America vs.

FILED

United States District Court for

DEFENDANT DOMINIQUE ORSINI

EASTERN DISTRICT OF NEW YORK

DOCKET NO. 74 CR 492

FILED IN CLERK'S OFFICE

JUDGMENT AND PROBATION/COMMITMENT ORDER

AO 245 (8/74)

COUNSEL

In the presence of the attorney for the government the defendant appeared in person on this date

DEC 20 1976

TIME A.M. P.M.

MONTH	DAY	YEAR
DECEMBER	17,	1976

☐ WITHOUT COUNSEL However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

☒ WITH COUNSEL Gino Gallina, Esq.
(Name of counsel)

PLEA

☒ GUILTY, and the court being satisfied that there is a factual basis for the plea, ☐ NOLO CONTENDERE, ☐ NOT GUILTY

DEC 20 1976

U. S. DISTRICT COURT E.D. N.Y.

IN CLERK'S OFFICE

FILED

FINDING & JUDGMENT

There being a finding/verdict of ☐ NOT GUILTY. Defendant is discharged ☐ GUILTY.

Defendant has been convicted as charged of the offense(s) of violating T-21, U.S.C., Sec. 173 & 17 in that on or about and between January 1, 1968, and April 1, 1971, both dates being approximate and inclusive, the defendant with others wilfull knowingly and unlawfully did combine, conspire, confederate and agree to violate Sections 173 & 174 of T-21, U.S.C. It was part of said conspira that the defendant and co-conspirators fraudulently and knowingly would import conceal, buy, sell and facilitate the transportation, concealmen and sale of large quantities of heroin and cocaine, narcotic drugs.

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of

SENTENCE OR PROBATION ORDER

The defendant is sentenced to imprisonment for a period of ten years as charged.

SPECIAL CONDITIONS OF PROBATION

ADDITIONAL CONDITIONS OF PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT RECOMMENDATION

The court orders commitment to the custody of the Attorney General and recommends,

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

SIGNED BY

☐ U.S. District Judge

☐ U.S. Magistrate

Harry Branaman

Date 12/20/76

86

IN THE
UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA	)	
	)	
v.	)	
	)	
DOMINIQUE ORSINI, ET AL.,	)	No. 75 CR 492
	)	
Defendants	)	
	)	
IN RE ANTHONY MARRO	)	

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D. N.Y.
SEP 16 1976
TIME A.M.

AFFIDAVIT OF ANTHONY MARRO

City of Washington)
) ss.
District of Columbia)

ANTHONY MARRO, being first duly sworn, deposes and says:

1. I am a news reporter for Newsweek magazine. I have been a news reporter for 13 years. I have worked as a reporter for Newsweek for two years. Before working for Newsweek, I worked as a reporter for Newsday (1968-1974), and The Rutland (Vermont) Herald (1963-67).

2. As a news reporter, I have specialized in reporting on drug enforcement and related matters. I have engaged in this specialty for the past four years, while also reporting on other topics.

3. In mid June, 1976, I was assigned to gather news concerning the methods used by agents of the Drug Enforcement Administration, an agency of the federal government, to obtain custody of suspected drug dealers who were located in foreign countries. I spent approximately one month gathering news on that subject. A substantial and very important part of my newsgathering for the story took place within the State of New York, and I did other newsgathering in Washington, D. C.

The newsgathering I did consisted principally of conducting interviews and examining court files.

4. It has been my experience in reporting on drug enforcement that people involved in that subject matter and possessing information useful to me almost never will provide information unless I promise that I will treat their communications to me as confidential and protect their identities from disclosure. In particular, informants who work for the federal government are extremely reluctant to provide me with criticism of official policy or with information revealing deficiencies in official policy unless I promise not to disclose their identities. It has further been my experience that information from such sources is often the most important information that can be obtained about drug enforcement, and that such information cannot be verified elsewhere.

5. My newsgathering resulted in an article in the August 16, 1976 issue of Newsweek which reported on how the U.S. Government obtains custody of suspected drug dealers in foreign countries. A copy of the entire article appears as Appendix 1 to this Affidavit.

6. The subpoena which has been served upon me in the above-captioned case, and which appears as Appendix 2 to this Affidavit, seeks to discover the identities of the sources of two statements that appear in the article. The sources of those two statements are confidential sources whom I interviewed while gathering news for the August 16 article or for previous news articles. They communicated with me after demanding and receiving from me an explicit promise that their identities would be kept confidential. They were federal officials who feared that their careers would be gravely injured if it were discovered that they

were providing to a reporter information that could be viewed as adverse to the government. The information sought by the subpoena relates in part to the phase of my newsgathering that was carried out in New York.

7. None of my confidential sources discussed with me any aspect of the means used by agents of the United States Government to obtain custody of Orsini and bring him to the United States. In particular, none of my confidential sources discussed with me any payment in connection with the Orsini case or the use of any physical force against Orsini. Apart from what I have been told by Mr. Gino Gallina, I have no information as to whether any physical force was used against Orsini. I have no information at all as to whether any payment was made in connection with the Orsini case.

8. Based on my experience as a newsman specializing in reporting on drug enforcement, and on my knowledge of the particular sources for the statements in the article, I am certain that I would not have been given the statements in question if I had not made promises of confidentiality. I am also certain that if I were now compelled to divulge the identity of my confidential sources I would not be able in the future to obtain significant information from federal officials and other persons knowledgeable about drug enforcement. Drug enforcement is a highly sensitive and secretive matter, and I as a reporter have been able to gather information about it only by agreeing to protect the confidentiality of my sources' identities and by carrying out my promises.

9. In my career as a reporter, I have never revealed the identity of a confidential source outside the news organization for which I have worked, and even among my colleagues I have revealed the identities of confidential sources only to the abso-

lutely minimal amount necessary. In the case of the August 16, 1976 article in Newsweek, I have not revealed the identity of any of my confidential sources outside the Newsweek organization, and I have not revealed the identity of the sources of the statements referred to in the attached subpoena to anyone within the Newsweek organization.

Anthony Marro

Sworn to and subscribed
before me this 14th day
of September, 1976

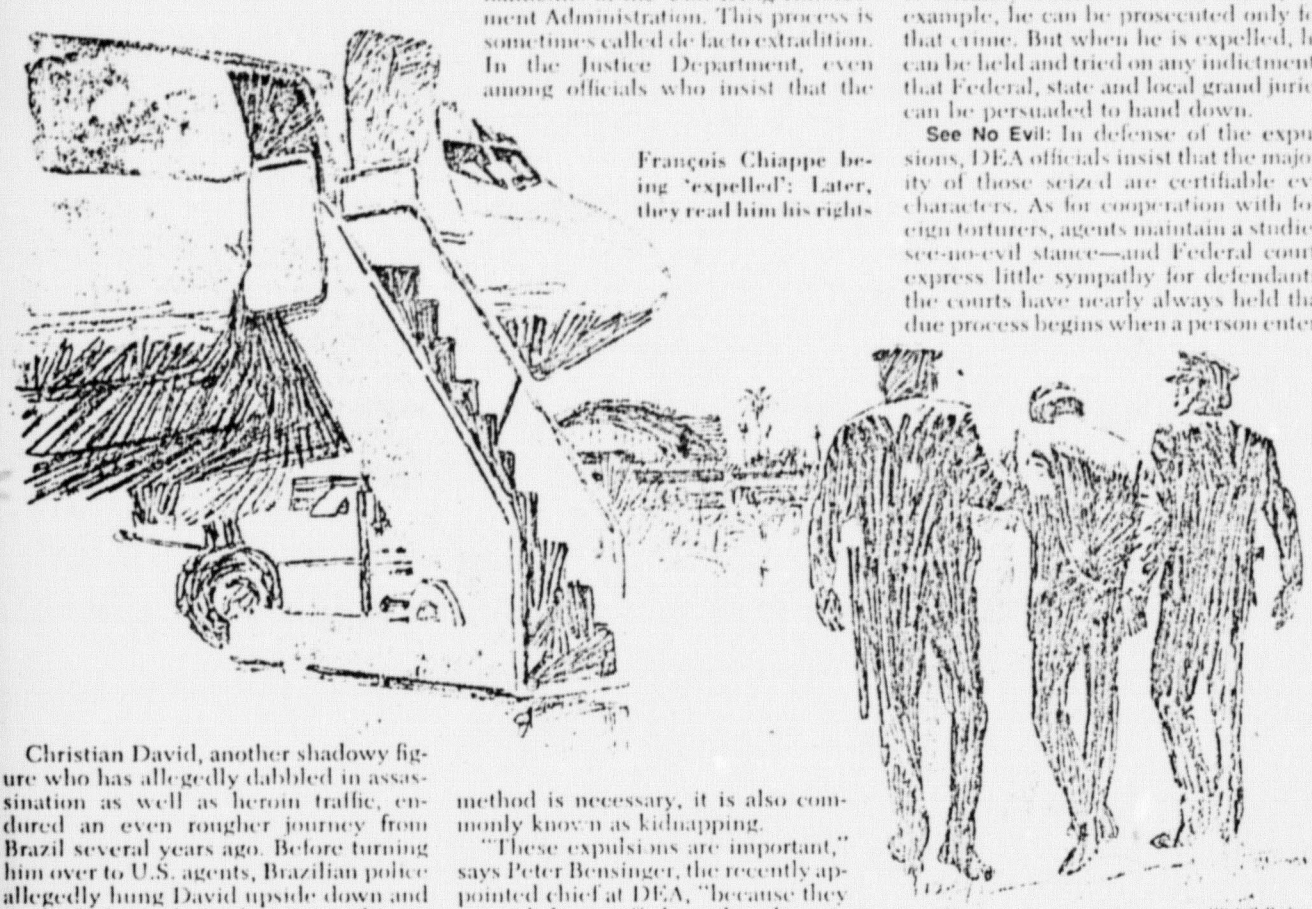
Notary Public

MY COMMISSION EXPIRES JANUARY 31, 1981

BEST COPY AVAILABLE

The Drug Vigilantes

François Chiappe traveled first class to the United States—in a chartered Braniff DC-8 that cost the U.S. Government $62,500. But Chiappe, who arrived in New York two months ago to face charges of conspiracy in international drug trading, did not enjoy the trip. His front teeth, some of which had been broken off at the gums during his police send-off from Argentina, were badly in need of dental help. His body was covered with bruises and there were three ugly slits across his forehead. It is doubtful that he paid much attention when, as soon as his plane was in international air space, U.S. agents read him his rights.



François Chiappe being 'expelled': Later, they read him his rights

Christian David, another shadowy figure who has allegedly dabbled in assassination as well as heroin traffic, endured an even rougher journey from Brazil several years ago. Before turning him over to U.S. agents, Brazilian police allegedly hung David upside down and applied electrodes to his ears and testicles. Shortly after his U.S. arrival, during questioning in a Federal office in lower Manhattan, David spotted some automobile jumper cables that an agent had left on a file cabinet. In terror of more shock treatments, David began banging his head furiously against a wall, trying to knock himself unconscious. "It was sort of funny," recalled an agent who was there. "No one was paying any attention to the guy."

By all official accounts, Chiappe and David are highly dubious objects of sympathy. Between them they have allegedly sent thousands of pounds of heroin into the U.S.—and ruined thousands of lives. David has been convicted and sentenced to twenty years, while Chiappe and others like him await trials in the near future. But the flight plan that brought them to American justice is a short cut with some troubling implications. Like more than 100 other foreign casualties of America's four-year-old "war on drugs," Chiappe and David were not legally extradited. Instead they were "expelled" from the countries where they resided—directly into the handcuffs of the U.S. Drug Enforcement Administration. This process is sometimes called de facto extradition. In the Justice Department, even among officials who insist that the method is necessary, it is also commonly known as kidnapping.

"These expulsions are important," says Peter Bensinger, the recently appointed chief at DEA, "because they remind drug traffickers that there is no sanctuary." They may also get results on occasion by slowing the drug flow. "We can arrest dealers on the streets and they're replaced in a matter of hours," says Bensinger. "But when we put these big dealers out of business, it causes a major disruption."

Some Federal judges, defense lawyers and State Department officials are not sure if the disruptions are worth the price. "It's an uncomfortable area," says Knute Malmborg, who handles many criminal extraditions for the State Department. "Given the high priority we have on stopping the drug traffic, it's hard to argue against the practice of informal expulsions. But the public should be aware of it, and it should be a matter of continuing debate." In the Justice Department, however, at least one middle-level official says, "No one is debating the merits of this issue. Here in the DEA, it's not a matter of concern—it's a source of amusement."

Like any vigilante system, informal expulsion has obvious hazards. There is the danger of snatching the wrong people; critics also claim that expulsions often involve U.S. agents, at least indirectly, in the kind of brutal torture that may be routine to some Latin American police—but would be unthinkable during domestic arrests. Finally, "informality" can provide a good excuse for skirting still other civil rights. When a person is formally extradited for a crime, for example, he can be prosecuted only for that crime. But when he is expelled, he can be held and tried on any indictments that Federal, state and local grand juries can be persuaded to hand down.

See No Evil: In defense of the expulsions, DEA officials insist that the majority of those seized are certifiable evil characters. As for cooperation with foreign torturers, agents maintain a studied see-no-evil stance—and Federal courts express little sympathy for defendants: the courts have nearly always held that due process begins when a person enters their jurisdiction, and how he got there is rarely a judicial concern. But the most compelling argument for the system is that it is the only one that works.

Under the varied and often archaic U.S. treaties with Latin American states, formal extradition on drug charges is all but impossible. Most extradition treaties stipulate that the crime in question must violate the laws of both countries involved, and drug dealing is not a crime in some nations. The treaties also allow

Mitchell Books

extradition only when the defendant has committed a crime in the extraditing country—and many large dealers never set foot in the U.S. So the only quick and simple way to grab foreign drug conspirators is to exert pressure on other governments to turn them over.

The pressure can take several forms. In the landmark 1973 case that triggered the crackdown in Latin America, the Nixon Administration was determined to nab an aging Frenchman, Auguste Joseph Ricord, who was reputedly running a massive drug operation from Paraguay. When a Paraguayan court held that Ricord couldn't be extradited under existing treaties, the State Department sent Nelson Gross, whose job was to "coordinate" the international narcotics sweep, to change some minds. As U.S. officials privately tell the story, Gross told Paraguayan President Alfredo Stroessner that the U.S. was prepared to cut off $11 million in annual aid and vote against loans to Paraguay by international agencies. A week later, Paraguay's Court of Appeals voted to extradite Ricord.

Kingpin? "He was not kidnapped in the literal sense," says Ricord's New York attorney Herbert Handman. "His process was under the color of law, but that made it all the worse. The U.S. Government went to court. Then, when it lost, it managed to corrupt the judicial process of another country." Ricord turned out to be considerably less than a "kingpin," DEA officials concede privately; most major traffickers had never even heard of him. But Ricord's conspiracy conviction and his twenty-year sentence encouraged prosecutors to move ahead. "Most of these guys had thought that they had to be caught with the drugs," says one assistant U.S. attorney. "The Ricord case showed that we could go in and grab them on conspiracy charges."

The Ricord case also marked one of the last formal drug extraditions. Agents soon decided that "expulsion" could be secured more efficiently—and more cheaply. "Clearly, we have paid for some of these people," says one Federal official. "It might not have been a specific quid pro quo, but we would give X dollars or X cases of ammunition to officials who helped get these people on planes."

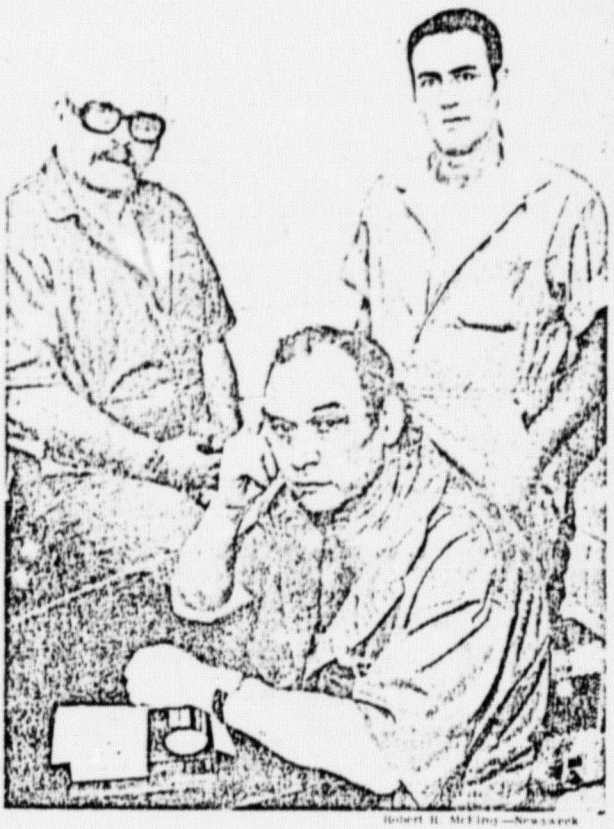
The next major DEA sweep through Latin America was in Chile after the 1973 fall of President Salvador Allende. The military junta, eager to show that Allende had made Chile a haven for criminals, swiftly incarcerated and then expelled a number of the DEA's targets—allegedly fingered by U.S. agent George Frangullie. The operation netted about a score of victims, including one who turned out to be the most embarrassing mistaken-identity blunder of the expulsion program.

In search of a Chinese drug dealer named Chino Choy, Chilean police grabbed a Chinese merchant named Carlos Choy Zeballos and demanded, "Are you Choy?"

"Yes," he said—and within days he was installed in the grimy Federal House of Detention on West Street in New York. His bail was set at $1 million, and he languished in jail for three months before a public defender convinced authorities that they had the wrong Choy. Even then, Choy remained trapped in a Catch-22 nightmare. Having expelled him, the Chilean rulers didn't want him back. And since he had not "legally" entered the U.S., the Immigration and Naturalization Service refused to let him stay without an around-the-clock DEA escort.

"I am completely outraged," U.S. District Court Judge Lee Gagliardi told Choy's prosecutors. "When it was so easy for you to get him here, I cannot understand why you cannot work with the same diligence to send him home." But the international machinery does not function well in reverse. "How do you unarrest a guy," asks one former DEA official, "after you've dragged him into another continent?" So Choy remained under house arrest for another month before finding his way back to Chile. The "right" Choy was never found. The victim has since tried to get compensation from the U.S. Government, and failed.

The most recent trophies of de facto extradition are the Frenchman Chiappe, the Italian Miguel Russo and the Chilean Yolanda Sarmiento, who were resident aliens of Argentina, and the alleged French master dealer Dominique Orsini, who was abducted from Senegal. The three Argentines were billed in DEA press releases as "among the most sought-after criminal narcotics organizers in the world." Like its Chilean counterpart, the junta that ousted the Isabel Perón government in 1976 seemed anxious to please U.S. agents who sought the expulsions. Because expelled persons are legally entitled to choose their destinations, the official line is that the trio "opted" for the U.S.—and possible jail terms. But even DEA men privately snicker at that notion. "If you consider it an option when someone puts a submachine gun in your mouth and says, 'Sign this paper'," says Russo's attorney Nancy Rosner, "then they had an option."



Robert R. McElroy—Newsweek

Chiappe, Orsini, Russo in custody: Who's breaking the law?

Russo was put on trial last month. The government's only witness was less than compelling, the prosecutors were unable to come up with promised documents that were to prove Russo had been legally expelled from Argentina—and the jury wound up hung, 8-to-4 in favor of acquittal. Now, as they await further trials, the "Argentine three" are drawing new attention to the de facto extradition procedure.

Embarrassment: If the DEA is unable to back up its claims with convictions in court—or if its "most wanted" press releases have to be toned down drastically, as in the Ricord case—the Argentine "kidnap" could turn out to be another embarrassment. But even if the government wins the case, its method still remains dubious. "The man was kidnapped," says Chiappe's attorney Gino Gallina. "This was the Watergate mentality, that the end justifies the means. It demeans the whole system."

Recent DEA guidelines have, in part, modified the system by limiting the freedom of agents to work with foreign police. A bill now pending in the Senate would further curb such activities by specifically denying the DEA any direct role in foreign police operations. But down in the trenches of the war on drugs, DEA agents have so far shown no inclination to stop taking prisoners through de facto extradition. That wartime attitude may be understandable, but noncombatants may conclude that kidnapping as a policy does demean the nation.

—PETE AXTHELM with ANTHONY MARRO

Subpoena to Produce Document or Object — Cr. Form No. 21 (Rev. 5-68)

United States District Court

FOR THE

EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

v.

DOMINIQUE ORSINI, Defendant.

No. 74 Cr. 492

To Anthony Marro
Newsweek Magazine
1750 Pennsylvania Ave. (Suite 1220)
Washington, D.C. 20006

You are hereby commanded to appear in the United States District Court for the Eastern District of New York (Courtroom of Hon. H. Bramwell) at 225 Cadman Plaza E., B'klyn. in the city of New York on the 17th day of September 1976 at 10:00 o'clock A. M.

to testify in the case of United States v. Dominique Orsini and bring with you any and all notes and writings concerning the identities of the unnamed persons referred to in an article appearing on pages 56-57 of the August 16, 1976 issue of Newsweek Magazine:(1) "U.S. officials [who] privately tell the story" of how the Government of Paraguay was threatened with the loss of American aid unless it extridicted one Auguste Ricord and (2) "one Federal official" who said "Clearly, we have paid for some of these people. It might not have been a specific quid pro quo, but we would give X dollars or X cases of ammunition to officials who helped get these people on planes.

This subpoena is issued upon application of the defendant, Dominique Orsini.

August 30, 19 76

LEWIS ORGEL

GINO E. GALLINA
Attorney for defendant
30 Broad St., N.Y., N.Y. 10004
Address

_____, Clerk.
By _____, Deputy Clerk.

[1] Insert "United States," or "defendant" as the case may be.

RETURN

Received this subpoena at _____ on _____
and on _____ at _____
served it on the within named _____
by delivering a copy to _____ and tendering to _____ the fee for one day's attendance and the mile-
age allowed by law.[2]

Dated: _____,

_____, 19___ By _____,

Service Fees
Travel _____ $
Services _____
Total _____ $

[2] Fees and mileage need not be tendered to the witness upon service of a subpoena issued in behalf of the United States or an officer or agency thereof. 28 USC 1825, or on behalf of a defendant who is financially unable to pay such costs (Rule 17(b), Federal Rules Criminal Procedure).

U.S. v. Orsini

1444

130/210

GINO E. GALLO
ATTORNEY AT LAW
30 BROAD STREET
NEW YORK, N. Y. 10004

PAY TO THE ORDER OF Anthony Marro

Aug 30, 1976

$ 112.00

One Hundred Twelve + 00/100 DOLLARS

MANUFACTURERS HANOVER TRUST COMPANY
60 Broad Street, New York, N. Y. 10015

For Gino E. Gallo

⑆021000030⑆0055 5⑈75063⑈

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

FILED
IN CLERK'S OFFICE
U. S. DISTRICT COURT E.D. N.Y.
JAN 17 1977
TIME A.M.
P.M.

UNITED STATES OF AMERICA

- v -

DOMINIQUE ORSINI,

Defendant.

In re: ANTHONY MARRO.

AFFIDAVIT IN OPPOSITION TO MOTION TO QUASH SUBPOENA

Ind. 74 CR 492

STATE OF NEW YORK)
ss.:
COUNTY OF NEW YORK)

GINO E. GALLINA, being duly sworn, deposes and says:

1. I am the attorney for defendant Dominique Orsini, am fully familiar with the facts and circumstances of this case, and make this affidavit in opposition to the motion of Anthony Marro to quash the subpoena my office served upon him.

2. On October 24, 1975 this Court granted defendant's motion to dismiss the indictment herein to the extent that it directed a hearing on defendant's allegations that he had been kidnaped, beaten and abducted from Senegal by Senegalese acting at the direction of American agents. United States v. Orsini, 402 F. Supp. 1218 (E.D.N.Y., 1975).

3. Since that time we have been able to establish that Mr. Orsini was kidnaped and beaten by Senegalese police. The fact that he was kidnaped is established by the fact that a Senegalese court ordered him freed on August 23 but he was held incommunicado until August 25 when he was turned over to the Americans; the fact that he was beaten was established by the testimony of the prosecution's own witnesses that he had to have a wrist would sutured and

that he was bloodstained at the airport and by the testimony of one Serge, who observed one of the beatings in a street outside the police station. Further proof of the beatings will be given when Mr. Orsini testifies on September 20, 1976.*

We have also been able to establish that he was forcibly put on the plane to the United States and, over his objection, injected with a drug to sedate him.

4. What we have not yet been able to prove, although the circumstances admit of no other conclusion, is that the Senegalese were somehow induced to commit these allegations upon Mr. Orsini by someone working for the American government. It was with a great sense of vindication, therefore, that I read the Newsweek article of August 16 which stated that the American government had arranged for forcible abductions such as this one by giving various indicements to foreign governments.

I immediately directed my associate, Joel A. Brenner, to call Newsweek and learn the source of this information. He told me that one of the authors (Peter Axthelm) refused to do so and he was unable to reach the other (Anthony Marro)**. I, therefore, directed him to serve subpoenas on both reporters but I am informed that only one could be served.

5. If the source of the information on American involvement knows about Mr. Orsini's case, then his testimony would be invaluable. Even if he only knows of other cases, or of a general American policy of arranging foreign abductions, such testimony would strengthen our claim that it happened here

*The fact that the movant's papers erroneously state both that Mr. Orsini has offered no proof that he was beaten and that Mr. Serge did not identify Mr. Orsini as the man being beaten is, no doubt, attributable to the fact that these incorrect assertions are based on a conversation with the prosecutor in this case. Memo in Support of Motion to Quash at 2, 3.

**Mr. Brenner's affidavit accompanies these papers.

and/or could lead us to persons with first-hand knowledge of this case.

6. As set forth in the accompanying Memorandum of Law, I believe that the testimony sought is relevant and material and that it is mandated to vindicate Mr. Orsini's constitutionally guaranteed right to a fair trial.

WHEREFORE, it is respectfully requested that the motion to quash be denied.

GINO E. GALLINA

Sworn to before me this

17th day of September, 1976.

Helen Costello

Notary Public

HELEN COSTELLO
Notary Public, State of New York
No. 24-4519527
Qualified in Kings County
Commission Expires March 30, 1978

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----------x

UNITED STATES OF AMERICA

- v -

DOMINIQUE ORSINI.

Defendant.

In re: ANTHONY MARRO.

----------x

AFFIDAVIT IN OPPOSITION TO MOTION TO QUASH SUBPOENA

Ind. No. 74 CR 492

STATE OF NEW YORK)
ss.:
COUNTY OF NEW YORK)

JOEL A. BRENNER, being duly sworn, deposes and says:

1. I am "of counsel" to Gino E. Gallina, attorney for Dominique Orsini, am fully familiar with the facts and circumstances of this case, and make this affidavit in opposition to the motion to quash the subpoena for Anthony Marro.

2. On or about August 23, 1976 I was instructed by Mr. Gallina to call the Newsweek reporters who wrote the August 16, 1976 article and learn the sources of their information on American involvement in the abduction of foreigners, including Dominique Orsini.

I called Peter Axthelm and discussed the story with him. He said that the information I wanted had been gathered by Anthony Marro who worked in the Washington bureau. He told me that Marro had revealed the identity of Marro's sources to him (Axthelm). I believe he said the interviews had taken place in Washington. While we were speaking I heard someone enter Mr. Axthelm's presence and say something to him; at this point he said that the article had caused an "uproar" in the State Department, that he would not

reveal the sources I wanted, and that I should speak with Newsweek's legal department.

I spoke with Edward Smith of the legal department who advised me that Newsweek would not reveal the sources I wanted and would fight any subpoenas.

I believe I called Mr. Marro in Washington and left a message for him to call me but he never called back.

3. On August 30 I prepared subpoenas for Mr. Axthelm and Mr. Marro and gave them to Roma Investigation Service to serve. I spoke with Roma personnel over the next few days and they advised me that Marro was on vacation until September 7 and that Axthelm was "evading service." Mr. Marro was finally served in Washington on or about September 10, 1976.

4. I also believe the information sought is essential to a vindication of Mr. Orsini's rights and that disclosure should be directed.

WHEREFORE, it is respectfully requested that the motion to quash be denied.

JOEL A. BRENNER

Sworn to before me this
17th day of September, 1976.

Notary Public

HELEN COSTELLO
Notary Public, State of New York
No. 24-4519527
Qualified in Kings County
Commission Expires March 30, 1978

*Mr. Salvatore Reale and Mr. Frank Santelli of Roma both advised me that they called Newsweek, were told Mr. Acthelm was in, but by the time they got from the lobby to Mr. Axthelm's floor they were told he was "out". Mr. Axthelm was never served.

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★ JAN 17 1977 ★
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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - - - -

UNITED STATES OF AMERICA,

Plaintiff AFFIDAVIT

- against- 74 CR 492

DOMINIQUE ORSINI, a/k/a "DOMINGO",

Defendant

- - - - - - - - - - - - - - - - - - - -

WASHINGTON)
: ss:
DISTRICT OF COLUMBIA)

LOUIS G. FIELDS, JR., being duly sworn deposes and says:

1. That I am the Assistant Legal Adviser for Special Functional Problems, United States Department of State, Washington, D.C., duly appointed to this position by the Director General of the Foreign Service on July 7, 1974, and that I have personal knowledge of the facts surrounding the actions of the Government of Senegal in surrending the person of DOMINIQUE ORSINI to the custody of an Agent of the Drug Enforcement Administration, an agency of the United States Government, pursuant to the authorization of the Acting Secretary of State communicated to the Embassy of the United States of America in Dakar, Republic of Senegal, by official Department of State telegram dated August 22, 1975.

2. That I was present at the Dakar International Airport in the Republic of Senegal on the morning of August 25, 1975, and witnessed the surrender of DOMINIQUE ORSINI by an official of the Government of Senegal to the custody of Drug Enforcement Administration Agent ANTHONY BOCCHICHIO, named in the aforesaid Department of State telegram as the agent of the United States of America empowered to receive custody of DOMINIQUE ORSINI. The said official of the Government of Senegal was Judicial Police Director CHEIKH SADIBOU NDIAYE, with whom I had previously met on August 24, 1975, together with members of the Senegalese Ministry of Justice concerning the United States Government's request that the Government of Senegal deliver custody of the said DOMINIQUE ORSINI to an authorized agent of the United States Government.

3. That DOMINIQUE ORSINI was surrendered to the custody of the United States Government by an official representative of the Government of Senegal known to me and that such delivery was performed pursuant to the sovereign act of the Government of Senegal by an official of that Government presumed by me to have full authority for such action by that Government.

LOUIS G. FIELDS, JR.

SWORN TO before me this

24th day of October, 1975.

IRENE K. INGALLS
Notary Public

My Commission Expires June 14, 1979

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- X

UNITED STATES OF AMERICA :

-against- :

DOMINIQUE ORSINI, :

Defendant. :

- X

74 CR 492

MEMORANDUM AND ORDER

APPEARANCES:

DAVID G. TRAGER
UNITED STATES ATTORNEY
EASTERN DISTRICT OF NEW YORK
Attorney for the United States
of AMERICA

By: LAVID A. DePETRIS
Assistant U. S. Attorney

WILLIAMS, CONNOLLY & CALIFANO
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Attorneys for Anthony Marro

GINO GALLINA, ESQ.
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NEW YORK, NEW YORK
Attorney for Defendant

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BRAMWELL, D. J.

This matter comes before the Court on the motion of Newsweek Magazine Reporter Anthony Marro to quash a subpoena duces tecum issued upon the application of the defendant, Dominique Orsini. The subpoena seeks to compel Mr. Marro to disclose theidentity of certain confidential sources from whom he obtained information. This information was subsequently published and disseminated to the general public in an article appearing in the August 16, 1976 edition of Newsweek Magazine.

This article concerned the methods used by the Drug Enforcement Administration, an agency of the Federal Government, to obtain physical control and custody of suspected international drug dealers in order to bring such persons to the United States to stand trial for alleged violations of United States narcotics laws.

Mr. Orsini seeks this information in order to show that the circumstances surrounding his apprehension in Senegal constituted a deprivation of due process of law, thus mandating a dismissal of the indictment against him.

Specifically, Mr. Orsini seeks documents and testimony concerning two subject matters: first, the identity of,"U. S. Officials [who] privately tell the story of how the Government of Paraguay was threatened with the loss of

American aid unless it extradicted one Augusta Ricorde"; and second, the identity of, "one federal official who said, 'Clearly, we have paid for some of these people. It might not have been a specific quid pro quo, but we would give x dollars or x cases of ammunition to officials who helped get these people on planes. '"

I

It would seem to be the position of Mr. Orsinis that the informationsought in the instant subpoena would somehow prove of significant value in the determination of whether or not he was subjected to acts of "torture, brutality, and inhumanity committed against him by or at the direction of American agents". United States v. Orsini, et al., 402 F.Supp 1218 at 1219 (E.D.N.Y. 1975). As indicated in this Court's order of October 24, 1975, such allegations, if substantiated, would require the dismissal of the instant indictment filed against the defendant, as mandated by United States v. Toscanino, 500 F.2d 267 (2d Cir. 1974); United States ex rel Lujan v. Gengler, 510 F.2d 62 (2d Cir. 1975), and United States v. Rafael Lira, 515 F.2d 68 (2d Cir. 1975). See United States v. Dominique Orsini, et al., supra.

Mr. Marro contends that this subpoena should be quashed on the following three grounds: first, that the information it seeks is immaterial and irrelevant to the Toscanino evidentiary hearing authorized by this Court's

Order of October 24, 1975; second, that the information sought is privileged under the First Amendment to the Constitution of the United States; and third, that the information sought is privileged under New York's Newsmen's Shield Law, Section 79-H of the Civil Rights Law, and under Article I, Section 8 of the Constitution of the State of New York, as both are incorporated into the federal commonlaw.

II

After careful consideration of all the motion papers, memoranda of law, and supporting affidavits submitted to it by the respective parties, and after oral argument, this Court is of the opinion that under the circumstances presented in the instant case, the subpoena duces tecum issued to Mr. Marro should and must be quashed.

It is patently clear that the subject matter sought in the subpoena bears no reasonable relationship to the issue of gross mistreatment of Mr. Orsini by or at the direction of American Officials. Counsel for Mr. Marro, Richard M. Cooper, Esq., and Edward L. Smith, Esq., have ably argued in motion papers and in oral argument that the information sought by the defendant is irrelevant and immaterial to the issue raised by the Toscanino Hearing. The Court agrees with, and has incorporated into its decision the persuasive reasoning of learned counsel on this point, concluding that the information sought by the instant subpoena

has absolutely no connection with either the treatment that Mr. Orsini received while in Senegal, or with the role, if any, of representatives, officials, or agents of the United States Government with reference to such treatment.

The first item sought in the subpoena relates to a statement concerning the case of one Auguste Recorde the events of which transpired in Paraguay. Mr. Orsini, however, was arrested and expelled from Senegal and has no known connection with Auguste Ricorde or with the nation of Paraguay. Information which relates to communications between the Government of Paraguay and the Government of the United States has absolutely no bearing on the issue of Mr. Orsini's treatment in Senegal.

The second item set forth in the subpoena is also of no relevancy to the issue of the standard of treatment accorded Mr. Orsini while he was in Senegal. The statement which is the subject of inquiry is itself not specific. Moreover, it too makes no reference to Mr. Orsini, or to any particular case. The statement does not even relate to the treatment of persons brought into the United States for trial, but rather it refers to payments, made in order to gain the cooperation of foreign governments. Such payments, to secure the return of fugitives to the United States, would not serve as a ground for dismissal of the indictment under the Toscanino Doctrine.

See United States v. Toscanino, supra; United States ex rel Lujan v. Gengler, supra; United States v. Rafael Lira, supra. See also United States v. Lovato, 520 F.2d 1270 (9th Cir. 1975).

The standard of conduct which is proscribed by Toscanino and its progeny is the infliction upon the defendant of grossly cruel and inhumane treatment by or at the direction of American officials or agents. United States v. Toscanino, supra; United States ex rel Lujan v. Gengler, supra; United States v. Rafael Lira, supra. See also United States v. Lovato, 520 F.2d 1270 (9th Cir. 1975).

Mr. Orsini apparently maintains that he need not prove such cruel and inhumane treatment, but rather that a showing of bribery of foreign officials by American agents is sufficient. This position is totally contrary to the law as it now stands. The case of the United States ex rel Lujan v. Gengler, supra, has reasserted the continuing vitality of the "Ker-Frisbie" Doctrine which provides that:

> [D]ue process of law is satisfied when one present in court is convicted of crime after having been fairly apprised of the charges against him and after a fair trial in accordance with constitutional safeguards. There is nothing in the Constitution that requires a court to permit a guilty person rightfully convicted to escape justice because he was brought to trial against his will.

Frisbie v. Collins, 342 U.S. 519 at 522 (1952) (Mr. Justice Black writing for a unanimous court). See also, Ker v. Illinois, 119 U.S. 436 (1886). It is manifest that if the Constitution tolerates the forcible kidnapping of a defendant to bring him to justice, then it also tolerates the payment of a bribe to obtain custody of a fugitive defendant.

Accordingly, even if Mr. Orsini was able to establish that a bribe had been paid to Senegalese officials by American agents in order to secure his return to the United States for trial, he would not be entitled to any relief under the Toscanino Doctrine. Thus, a subpoena issued to prove that bribery took place is pointless and unwarranted since it fails to provide relevant and material evidence on the Toscanino issue presently before the Court. The obvious irrelevancy of the statement is further underlined by the fact that in the instant case for the purposes of the Toscanino hearings depositions have already been taken of Drug Enforcement Administration agents and other American officials in Senegal who would have knowledge of any alleged bribery.

Finally, it should be noted that neither of the two items sought in the instant subpoena relates in any way to a bribe in Mr. Orsini's case. Therefore permitting such inquiry would be a futile gesture.

Thus, for the reasons set forth above, the Court is clearly warranted in its finding that the subpoena duces tecum is irrelevant and immaterial for the purpose of the Toscanino hearing.

III

Turning now to the second reason put forth by Mr. Marro in his motion to quash, this Court recognizes the argument of many members of the press, that the First Amendment stands as an absolute prohibition against any official abridgement of freedom of the press. This view encompasses absolute protection of journalists against forced disclosure of their confidential sources. However, the Courts find this broad interpretation to be contrary to the weight of authority. See Branzburg v. Hayes, 408 U.S. 665 (1972); Democratic National Committee v. McCord, In Re Bernstein, 356 F.Supp. 1394 (D.D.C. 1973); Loadholtz v. Fields, 389 F.Supp 1229, (M.D.Fla. 1975). Rather, this Court finds that there exists no absolute rule of privilege protecting newsmen from disclosure of confidential sources. Instead, what is required is a case by case evaluation and balancing of the legitimate competing interests of the newsman's claim to First Amendment protection from forced disclosure of his confidential sources, as against the defendant's claim to a fair trial which is guaranteed by the Sixth Amendment.

However, in the instant case, it is clear that the balance of interests weighs decidedly in favor of protecting the confidentiality of Mr. Marro's sources, inasmuch the information sought is wholly irrelevant and immaterial to the Toscanino issue now before this Court.

IV

Accordingly, on the grounds of irrelevancy and immateriality, as well as upon the grounds of First Amendment protection, the subpoena duces tecum issued to Mr. Marro is hereby quashed.[1/]

It is SO ORDERED.

Henry Bramwell
U. S. D. J.

Dated: Brooklyn, New York
September 26th, 1976

FOOTNOTE

1/ Therefore the Court finds it unnecessary to consider the third ground raised by Mr. Marro as a basis to quash the subpoena, to wit, that the information sought by the subpoena is privileged under Section 79-H of the Civil Rights Law of New York and Article 1, §8 of the New York Constitution, as incorporated into Federal Common Law.

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U. S. DISTRICT COURT E.D. N.Y.

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TIME A.M.
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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- X

UNITED STATES OF AMERICA :

-against- :

DOMINIQUE ORSINI, et al., :

Defendants. :

- X

75 CR 492

FINDINGS OF FACT
CONCLUSIONS OF LAW
AND ORDER

APPEARANCES:

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By: DAVID A. DePETRIS
Assistant U. S. Attorney
Attorney for the United States
of AMERICA

GINO GALLINA, ESQ.
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Attorney for Defendant

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BRAMWELL, D. J.

Factual Background of the Toscanino Evidentiary Hearing

This matter initially came before the Court on the motion of the defendant Dominique Orsini to dismiss the indictment filed against him "in the interest of justice". Mr. Orsini alleged in a sworn affidavit presented to this Court:

> that he was unlawfully kidnapped, beaten and drugged by Agents of the United States Government in Dakar, Senegal and brought to the United States. That the defendant appeared before the Court in Dakar, Senegal, and after a hearing was ordered to be released. That Agents of the United States Government, together with others acting at their directions deliberately ignored and conspired to controvert the lawful directive of the Senegalese Court and held the defendant against his will.

The defendant further alleged that he was continuously tortured, kicked and beaten. That he suffered a severe wound of the hand and was denied proper medical attention by the American Agents. Finally, that the American Agents used "drugs to reduce his resistance and in an act of illegality kidnapped the defendant and transported him to the United States".

On October 24, 1975, this Court entered an order directing an evidentiary hearing to determine the validity

of these allegations as required by United States v. Toscanino, 500 F.2d 267 (2d Cir. 1974) and its progeny.[1/] The Court indicated in that order that the aforementioned "allegations, if substantiated, would clearly constitute a deprivation of defendant's constitutional rights of due process . . . and such denial . . . would require the dismissal of the indictment filed against Mr. Orsini". See United States v. Dominique Orsini, et al., 402 F.Supp. 1218 (E.D.N.Y. 1975).

The following constitutes this Court's formal Findings of Fact, Conclusions of Law, and Order with reference to the Toscanino evidentiary hearing.

Findings of Fact

1. In 1974, the defendant, Dominique Orsini, was indicted for a conspiracy to import and distribute narcotics into the United States by a grand jury sitting in the Eastern District of New York.

2. On July 30, 1975, the United States Department of State directed the American Embassy in Dakar, Senegal to contact the Senegalese government in order to effect the provisional arrest of the defendant, Dominique Orsini. (Hearing Minutes, 11/20/75 at 66, 70 (Fields); Hearing Minutes, 11/21/75 at 134-35 (Tryal); Hearing Munites, 7/26/76 at 6-7 (Davis)).

3. On August 6, 1975, the defendant, Dominique Orsini, left Buenos Aires, Argentina for Nice, France via Dakar, Senegal. Agent Tryal of the United States Drug Enforcement Administration travelled aboard the very same aircraft. Upon arrival at the airport in Dakar, Senegal, Agent Tryal identified Mr. Orsini to Charge D'Affaires Allan Davis of the American Embassy in Dakar, Senegal, who in turn requested the Senegalese police to arrest Mr. Orsini. Shortly thereafter Mr. Orsini was arrested by the Senegalese police who removed him from the Dakar Airport. (Hearing Minutes, 11/21/75 at 135-40 (Tryal); Hearing Minutes, 7/26/76 at 7-10 (Davis)).

4. No United States Government offical, representative or agent had any contact or communication with Mr. Orsini between August 7, 1975 and August 25, 1975. No payment of any kind, whether of money, goods, or services was made by any American official, representative, or agent to any official, representative, agent, or member of the Senegalese government in exchange for their assistance in the arrest and expulsion of Mr. Orsini to the United States. (Hearing Minutes, 11/21/75 at 138-39 (Tryal); Hearing Minutes, 7/26/76 at 10, 23-24 (Davis)).

5. On August 22, 1975, State Department Legal Advisor Louis Fields, Esq. and Drug Enforcement Administration

Agent Bocchichio traveled from the United States to Dakar, Senegal. Mr. Fields' possessed extradition documents for defendant Orsini. Shortly after their arrival in Dakar, Mr. Fields and Agent Bocchichio met with Allan Davis, Charge D'Affaires of the American Embassy in Dakar. Thereafter, they visited the Senegalese Ministry of the Interior and the Ministry of Justice. Mr. Fields and Mr. Davis presented the extradition documents to the appropriate representatives of the Senegalese government. (Hearing Minutes, 11/20/75 at 27-38 (Fields): Hearing Minutes, 11/21/75 at 232-235 (Bocchichio); Hearing Minutes, 7/26/76 at 11-13 (Davis)).

6. On August 23, 1975, a representative of the Senegalese government, Sadibou Ndiaye, the head of the Federal Judiciary Police, indicated in a telephone call he placed to Mr. Davis that the Senegalese government would retain custody of Mr. Orsini until Monday morning, August 25, 1975, at which time Orsini would be delivered to American agents at the Dakar Airport for a Pan American flight to New York. Mr. Davis had anticipated this possibility and prior to his conversation with Mr. Ndiaye had made flight reservations for the defendant and Agents Bocchichio and Collier. This was done because Dakar - New York flights do not depart on a daily basis and are usually overbooked. Agent Collier had previously been notified in Paris, France that it would be necessary for him to assist in the escort

of Mr. Orsini from Senegal to New York in the event that the Senegalese Government was to determine that Mr. Orsini be placed in the custody of American officials. (Hearing Minutes, 11/20/75 at 38-42 (Fields); Hearing Minutes, 11/21/75 at 182 (Collier); Hearing Minutes, 11/21/75 at 235 (Bocchichio); Hearing Minutes 7/26/76 at 14-16 (Davis)).

7. On August 23, 1975 the Court of Appeals of Senegal ordered Mr. Orsini released. Shortly thereafter, the Senegalese Federal Judiciary Police apparently rearrested him.

8. On August 24, 1975, Agent Collier arrived in Dakar, Senegal. (Hearing Minutes, 11/21/75 at 182-184 (Collier)).

9. In the early morning hours of August 25, 1975, the Senegalese police attempted to take Mr. Orsini from the jail in which he was incarcerated in order to transport him to the Dakar Airport. Mr. Orsini resisted and struggled with the police. During the course of the scuffle with the police, Mr. Orsini suffered a cut wrist. Mr. Orsini was taken to the airport after receiving medical treatment for his superficial wound.

10. Upon his arrival at the Dakar Airport, Mr. Orsini violently struggled with the Senegalese police and screamed continuously. Finally, Mr. Orsini was placed

aboard the aircraft which was scheduled to fly to New York. However, for safety reasons, the pilot refused to depart with Mr. Orsini aboard unless Orsini was sedated. A Peace Corps doctor who was then called, administered, with the express consent of the defendant, a dosage of valium in order to calm him. Subsequently, the aircraft departed for the United States. (Hearing Minutes, 11/20/75 at 42-49, 52-60 (Fields); Hearing Minutes, 11/21/75 at 184-194 (Collier); Hearing Minutes, 11/21/75 at 236-240 (Bocchichio); Hearing Minutes, 7/26/76 at 17-24 (Davis)).

11. To the extent that Mr. Orsini alleges that he was struck by Agent Bocchichio and that excessive force was utilized by the Senegalese police in removing him from the jail to take him to the airport, his testimony is unsubstantiated and the Court discredits that testimony. The Court further finds that Agent Bocchichio did not assault the defendant Orsini. To the extent that Mr. Marie Appoline Serge testified by deposition that he personally observed someone (possibly Orsini) being dragged from a police station in Dakar, Senegal on August 25, 1975, the Court finds that this testimony is unworthy of belief and further, that a positive identification of Mr. Orsini was not made by Mr. Serge.

12. This Court finds that Mr. Orsini was treated by the Senegalese in a fashion similar to that accorded to all other prisoners held in custody by them. (Hearing Minutes, 11/21/75 at 196 (Collier)).

13. The Senegalese Government did not protest the expulsion of Mr. Orsini to the United States. (Hearing Minutes, 11/20/75 at 60 (Fields)).

Conclusions of Law

In United States v. Rafael Lira, 515 F.2d 68,70 (2d Cir. 1975), the Court set forth the controlling principles of law to be applied in a case where a Toscanino claim is raised:

> In general a court's power to bring a person to trial upon criminal charges is not impaired by the forcible abduction of the defendant into the jurisdiction. Ker v. Illinois, 119 U.S. 436, 7 S.Ct. 225, 30 L.Ed. 421 (1888); Frisbie v. Collins, 342 U.S. 519, 72 S.Ct. 509, 96 L.Ed. 541 (1952). However, in United States v. Toscanino, supra [2d Cir., 500 F.2d 267], we held that this general rule, sometimes referred to as the "Ker-Frisbie doctrine," is subject to the overriding principle that where the Government itself secures the defendant's presence in the jurisdiction through use of cruel and inhuman conduct amounting to a patent violation of due process principles, it may not take advantage of its own denial of the defendant's constitutional rights. We there stated that a district court must "divest itself of jurisdiction over the person of a defendant where it has been acquired as the result of the Government's deliberate, unnecessary, and unreasonable

> invasion of the accused's constitutional rights." 500 F.2d at 275. More recently in United States ex rel Lujan v. Gengler, 510 F.2d 62 (2d Cir., 1975), we reaffirmed the principle that the "Ker-Frisbie doctrine" does not bar judicial scrutiny of "conduct of the most outrageous and reprehensible kind by United States government agents," which results in denial of due process, 510 F.2d at 65, although we there found that the government conduct did not reach the level proscribed by Toscanino.
>
> Essential to a holding that Toscanino applies is a finding that the gross mistreatment leading to the forcible abduction of the defendant was perpetrated by representatives of the United States Government. In Toscanino, for instance, we stated that upon demand the defendant would be required to establish "that the action was taken at or by the direction of United States officials.

In applying the aforementioned controlling principles of law as articulated in Toscanino, supra, Lujan, supra, and Lira, supra, to the Court's Findings of Fact previously set forth, this Court reaches the following Conclusions of Law:

1. The arrest and subsequent expulsion of the defendant Dominique Orsini from Senegal were sovereign and legitimate acts of the Senegalese Government.

2. Mr. Orsini was not beaten, tortured, or subjected to inhumane treatment by American agents or officals. Moreover, there is no evidence to indicate any American involvement in any alleged assault on Mr. Orsini by Senegalese or other foreign agents or policemen. Furthermore, if Mr.

Orsini was assaulted, this Court finds that American agents or officials had no knowledge of said alleged assault. Finally, the Court finds that Mr. Orsini was neither tortured nor subjected to inhumane treatment by anyone, whether American, Senegalese, or other foreign national agents.

3. The dosage of valium administered to Mr. Orsini was given with his express consent and only after the aircraft's pilot refused to depart unless Mr. Orsini was sedated. The injection was given by a licensed physician.

4. There is nothing in the record of the evidentiary hearing conducted by this Court to support a finding of American governmental conduct sufficiently shocking to reach the level of a violation of Mr. Orsini's due process rights.

5. There has been no protest lodged by the government of Senegal with reference to the departure of Mr. Orsini from Senegal to the United States.

Summary of the Court's Determinations and Order

In sum, this Court finds, after careful consideration of the testimony of the witnesses and the documentary evidence adduced at the recently concluded Toscanino Hearing, that the defendant Dominique Orsini was not tortured, beaten, or subjected to inhumane treatment by American agents; nor was he tortured, beaten, or subjected to inhumane treatment by Senegalese or other foreign national agents or policemen,

at the request of, or at the direction of, or with the consent of American agents. It is concluded that any force which may have been used by Senegalese police on August 25, 1975 was both reasonable and justified under the circumstances presented, in that Mr. Orsini was unreasonably and violently resisting the sovereign and legitimate act of the Senegalese Government in expelling him from that country.

In reaching these conclusions, the Court has credited the testimony of Agents Bocchichio, Collier, and Tryal, State Department Legal Advisor Louis Fields, Charge D'Affaires Allan Davis of the American Embassy in Dakar, Senegal and has discredited the testimony of Mr. Orsini and Mr. Serge.

The Court has further considered that no protest was made by the Senegalese Government to the proper diplomatic channels of the United States Department of State with reference to Mr. Orsini's departure from Senegal.

It should be emphasized that even if the Court were to credit Mr. Orsini's testimony, and to consider it in its most favorable light, the events surrounding Mr. Orsini's expulsion from Senegal do not reach the standard of conduct condemned and proscribed by the Toscanino Doctrine.

Accordingly, since this Court finds that there has been no violation of the Toscanino Doctrine, the Court can

and will assert jurisdiction over the defendant Dominique Orsini for the purpose of the prompt and fair disposition of the criminal charges involving Mr. Orsini which are now pending before it.

Therefore, the defendant's motion to dismiss the instant indictment on Toscanino grounds is hereby denied.

It is SO ORDERED.

Henry Bramwell
U. S. D. J.

Dated: Brooklyn, New York
September 28, 1976

FOOTNOTE

1/ See United States ex rel Lujan v. Gengler, 510 F.2d 62 (2d Cir. 1975); United States v. Rafael Lira, 515 F.2d 68 (2d Cir. 1975); United States v. Lovato, 520 F.2d 1270 (9th Cir. 1975).

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U.S. DISTRICT COURT E.D. N.Y.
DEC 5 1975
TIME A.M.
P.M.

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

----------x

UNITED STATES OF AMERICA, :

-against- : 74-CR-492

DOMINIQUE ORSINE, :

Defendant. :

----------x

United States Courthouse
Brooklyn, New York

November 20, 1975
11:00 o'clock A.M.

B e f o r e :

HONORABLE HENRY BRAMWELL, U.S.D.J.

BURTON SULZER
OFFICIAL COURT REPORTER

Appearances:

DAVID G. TRAGER, ESQ.
United States Attorney
for the Eastern District of New York

BY: DAVID DE PETRIS, ESQ.
Assistant U.S. Attorney

MURRAY CUTLER, ESQ.
Attorney for Defendant
-and-
BY: GINO GALLINA, ESQ.
Of Counsel

MR. DE PETRIS: Your Honor, I received yesterday Mr. Gallina's memorandum of law and affidavit, I believe it was, concerning one -- one portion I believe of the memorandum concerns a speedy trial and the other portion concerning the taking of depositions of certain individuals in various countries.

I am not in a position today to be able to indicate the Government's position with respect to all of the depositions which Mr. Gallina has requested.

I might add that his memorandum or affidavit indicates that he intends to depose several police officials in --

THE COURT: Actually, this hearing was requested at the -- was brought about at the defendant's request.

The Court does not wish to make this a long drawn out operation where we will be taking depositions for the next several months. Not only that, the problem of sending an assistant United States attorney halfway across the world on a case that is before the Court is not something that the Court has any intention of doing, and the Court, if anything, doesn't want to do this.

The first thing I would ask Mr. Gallina, as to

those witnesses who he sets forth as being unavailable, what documentation he has now --

MR. GALLINA: I will be able to provide to your Honor --

THE COURT: Now?

MR. GALLINA: -- as I indicated to your Honor the other day, I have sent for this documentation --

THE COURT: They can send you a telegram and you will get it the next day.

MR. GALLINA: If your Honor is satisfied with a telegram.

I have asked for affidavits to be made in the United States Embassy.

THE COURT: It would make a showing. It is not that I am satisfied with it. You made representations, and maybe there is no basis for this.

MR. GALLINA: I have sommunicated with these persons myself on the phone. I will make the representations in an affidavit of my own, if that is satisfactory to your Honor. I will then also present to your Honor telegrams, if that is satisfactory at this moment.

THE COURT: I don't want this to be drawn out and we are going on a hearing and the man is in jail, and this is what will happen unless this thing is

properly presented.

Actually, after the Government presents what other proof the Government has to, that is most of what the Court may need for a finding.

MR. GALLINA: I don't believe so, your Honor.

THE COURT: This is not a trial at this time.

MR. GALLINA: I don't believe so, your Honor. I believe that your Honor -- and I respectfully say this to your Honor -- is not aware, I guess, of the thrust of what I am arguing vis-a-vis Toscanio, that --

THE COURT: I am aware of the fact that you want this thing to be drawn out and it may take many months, and it may uproot people who --

MR. GALLINA: Not at all.

THE COURT: -- who are required here to do their normal functions, and this is something I don't want to have.

MR. GALLINA: There is no reason this can't be done within a couple of weeks, and a couple of weeks is not an extended period of time in which to get all the necessary evidence to be able to preserve the defendant's rights.

I beg to differ with your Honor that --

THE COURT: This attorney who you list as being unavailable, why can't he come here?

MR. GALLINA: He will not come here. He was hired for a certain job and that is the job that he did.

THE COURT: Normally, you have attorneys and they go anywhere, they do everything. The attorneys we have, even you yourself, you go all over the world. I know that.

Why can't this man come here for one day and go back? I could hear him in one day. Not only that, I feel that the Court, if the lawyer were brought in, that the Court would hear most of what the defendant would have to say, because the lawyer was one individual I feel who knows, and that is the man, and I don't see why he can't be brought here.

MR. GALLINA: Your Honor, I will attempt again to communicate with him, and I will present to your Honor a telegram from him in the next couple of days.

THE COURT: Have you spoken to him?

MR. GALLINA: Yes.

THE COURT: What did he say?

MR. GALLINA: He states to me that he will not come to the United States.

THE COURT: Why did he say he won't come?

MR. GALLINA: He stated to me that he was retained to represent the defendant at the time he did

represent him in Dakar concerning a certain application or motion of the defendant which was successful, by the way.

THE COURT: Did you offer him a fee? A fee to come to the United STates?

MR. GALLINA: I offered to pay him all his expenses that were necessary to --

THE COURT: Did you offer him a fee?

MR. GALLINA: A legal fee?

THE COURT: Yes sir.

MR. GALLINA: I didn't believe that would be appropriate.

THE COURT: If you are willing to take an assistant and send him to Africa, it is cheaper to take that money and get the lawyer here.

MR. GALLINA: I am afraid that if I pay a lawyer a fee to testify, that I may be transgressing some statutes.

THE COURT: It is not a fee to testify, but a fee for his services for appearing and for the fact that he has to give service to this case.

MR. GALLINA: Your Honor, I will do that. I will do that.

THE COURT: This is what I want you to do, and I want you to bring him here, because I think from the

lawyer most of what the defendant is going to present to the Court will be brought before the Court.

MR. GALLINA: Your Honor, I will definitely see that that is done.

THE COURT: I don't see why that was not the approach you took.

MR. GALLINA: My approach I think was a proper and conservative one. I offered to pay his necessary expenses and I offered to pay his transportation to this country.

THE COURT: Sometimes we can be conservative when we should be liberal and we are liberal when we should be conservative.

MR. GALLINA: If I were to say, "Look, I want you to testify here," he would say to me, "How much do you offer me to testify? That's not enough. Offer me some more." I'd be in a real pickle.

THE COURT: I am sure a reasonable fee which the lawyer would probably be entitled to would be what would get him here and it would save the Court time, it would expedite what we have to do and I think -- not only that, if the lawyer came, I think he would give us most of the testimony that the defendant would need, because he was the man who knew what was going on.

MR. GALLINA: No, he was not there at the time

of the original seizure.

THE COURT: Yes, but I am sure something was said to him after when the defendant went in the courtroom, I am sure the defendant must have told him, "Well you know this, this is what happened. This is what they did to me." He knew -- he must know something about it.

Tell him to bring the record with a translation so we can know what went on; tell him to bring it.

MR. GALLINA: The most important eyewitnesses were the police officials there, Mr. Wadde tells me they will not come here, they will not come here. In addition, I have spoken to the brother of the --

THE COURT: If we get the lawyer, I think most of what the defendant will have to present will be before the Court and I think that would be a good part of what the defendant will be in a position to show, because the lawyer is like any other lawyer, he knows what is going on. He understands and he will tell us just what went on.

MR. GALLINA: But your Honor, there is some additional evidence I think would be of great value to your Honor in your decision, and that is the fact that there are officers who worked for the Senegalese police who worked as an arm of the United States

Government.

They did things illegally there in Senegal in violation of Senegalese law.

THE COURT: That is not going to be what the Court needs. What the SEnegals did that was illegal, I don't need. Your position is going to be what the American, United States agents did that was illegal; that is the important issue.

MR. GALLINA: If the American agents bribed SEnegalese officials to do something illegal, in essence, they became their own agents.

THE COURT: If that is your position, I want you to bring the people here and you put them in front of this Court and tell us so. I am not going to let that go for depositions.

MR. GALLINA: Your Honor, the prosecutor --

THE COURT: You are going to bring them here, Mr. Gallina, if you say that is true, I am not going to have anybody deposed on that type of a situation.

MR. GALLINA: You will have both parties available to examine these witnesses.

THE COURT: I do not care. If it is a question of bribery, I want that person here in this court to say so. That is your problem. If that is what you are deposing for, I am going to deny it.

MR. GALLINA: That is only one of many issues.

THE COURT: On that issue, that is denied.

What is the next issue?

MR. GALLINA: The brother and the wife, of course, of the defendant, were both present and they observed the acts of our agents, which I know --

THE COURT: I am sure they spoke to the lawyer, too, and the lawyer got the benefit of what they did. Now only that, being a lawyer and being objective, I am sure he knows more about it than they do.

Go ahead, what do you want to do about that?

MR. GALLINA: Your Honor, if we are going to allow -- if your Honor is going to consider hearsay statements made to the lawyer --

THE COURT: It is not that I am going to consider hearsay statements, but I am going to permit him to come in and be explored to the fullest extent, you see. More so than that, I want him to bring the record of that day in Court, a certified copy of it.

MR. GALLINA: I have that.

THE COURT: And the translation. That's what I want him to bring.

MR. GALLINA: I have an original --

THE COURT: And he can present that to the Court. I want him to come in and present it.

MR. GALLINA: Well, I have a copy for your Honor's information.

THE COURT: I will take it from you, too. That doesn't mean I won't take it from you.

MR. GALLINA: I have a copy from the Senegalese court in French. I have a certified copy of it.

THE COURT: What about the brother and the wife and the others?

MR. GALLINA: I have a hint from the government, and I think the government may affirm this or maybe they will deny it, that if Mr. Orsine's brother were to come to this country he would be placed under arrest.

He is afraid, and expressed to me the fact that he will not come to this country, and he is an essential witness.

Just because he is a brother --

THE COURT: You say he is essential. He may or may not be essential.

MR. GALLINA: He was there present.

MR. DE PETRIS: There is no outstanding charge against -- I am not sure which brother he is talking about.

MR. GALLINA: The brother from France, Pierre.

MR. DE PETRIS: There is no charge outstanding in this country against the brother or the wife.

MR. GALLINA: Would the Court immunize these witnesses --

THE COURT: I will not immunize them because that is not the Court's position. I am not going to -- if Mr. DePetris wants to get authority, I think he should be more the one who can take that position than I.

MR. GALLINA: I would therefore make an application at this time --

THE COURT: Suppose for some reason there is a crime that they have committed here and then they come in and I immunize them, why should I immunize him under these circumstances?

MR. GALLINA: Because the Government has the same power to immunize witnesses so they can use them, I would ask the Court at the same time, in the name of due process, to grant to the defendant the same power to call witnesses, which he has under the Constitution, the right to call witnesses and to immunize those witnesses for the purpose of testimony.

THE COURT: Mr. Gallina, if the Government will not oppose the Court, I will give them immunity for purposes -- if the Government does not oppose the Court, but if the Government opposes the Court I will not do it.

MR. DE PETRIS: I am not sure of exactly what Mr. Gallina is saying. He is using the term immunity. Is what he is really saying --

THE COURT: Immunity from arrest, that's what he means.

MR. DE PETRIS: Guarantee safe entry and exit from this country?

THE COURT: That's what he means.

MR. GALLINA: That's correct.

THE COURT: I guess Mr. De Petris will consider it, but if the Government opposes it, under no circumstances will I do it.

MR. DE PETRIS: That I am not in a position to respond to today.

THE COURT: I understand that.

MR. GALLINA: I can understand that, also. I believe that we could go forward with the hearing at this time. I would suggest to your Honor that the matters that I asked your Honor to allow me to examine by deposition out of this country will be simply at the expense of the defendant, and will take place very quickly.

THE COURT: Mr. Gallina, if it is a question of the bribery of Government officials, I want those witnesses brought into this Court and put on the

witness stand and to testify in this Court. I will not permit that by deposition. I definitely will not permit that.

MR. GALLINA: Well, your Honor, there are other areas of the conduct of the witneses here, of the Government agents, from the little bit that I have on the --

THE COURT: Mr. DePetris has certain witnesses. We will start now. I will permit him to get those witnesses on and then if we have anything further I will put it over a week for you to get the attorney here, to bring in the attorney.

MR. GALLINA: Or present you with whatever telegrams or statements --

THE COURT: Or if you want two weeks to get the attorney, I will give you two weeks.

MR. GALLINA: I will need it.

THE COURT: All right. I will give you two weeks to get the attorney in here. At this time we will let Mr. DePetris put his witnesse on and we will dispose of this part. Then we will have them out of the hearing, they will be taken care of and heard.

MR. GALLINA: At the end of the two weeks, before the two week period elapses, I am certain that

I will be able to offer to your Honor a certified statement from the attorney as to whether he intends to come here or not.

THE COURT: It is not a question of that. You can call him, speak to him, tell him what you want to do.

Maybe it is cheaper if you let him bring his wife with him and then they will have a little vacation, you know, and we will get him here. Because to put all this expense of yourself and lawyers and whatnot going there, it would be cheaper bringing two people here.

MR. GALLINA: I will endeavor to show to your Honor that I will make every honest effort possible to get that attorney here.

But, in addition, I don't want to foreclose at this moment, and I ask your Honor not to foreclose at this moment the fact that there are other witnesses in Senegal, men who have information that Mr. Wadde --

THE COURT: On the bribery?

MR. GALLINA: Not only as to that aspect, but as to the beatings, as to the torture, as to the drugging --

THE COURT: You mean when he was in the custody of the Senegalese police, the Americans were allowed to go into the prison and beat him, is that what you mean?

When he was in their custody they opened the doors so the Americans could go in and beat him?

MR. GALLINA: As to what they did at the behest of the American authorities, --

THE COURT: You bring them over here and they can tell us what they did at the behest of the American authorities.

MR. GALLINA: And exactly who was present of the American authorities --

THE COURT: What they did is not what this hearing is going to be calling for, Mr. Gallina, it is going to be what the American authorities did.

MR. GALLINA: Of course, your Honor, it is what the American authorities did and wnat their agents may have done.

They hired people --

THE COURT: Or their agents.

MR. GALLINA: If they hired people to act in their behalf in Senegal, and these people did act in their behalf in Senegal in an illegal fashion --

THE COURT: Mr. Gallina, as a practical matter, if those people were so easy to hire, I think you could get them here. If they were that available and that cheap, if that is the situation, you see, you can get those people here if they were so readily

available. And I expect that you will do it under those circumstances.

You know, anybody that is walking around and for $100 or $200 will do this type of thing that you say he did, I'm sure you can get that person here, if they were that cheap.

I am sure they were not going for big out-of-the-world figures.

MR. GALLINA: Who is going to come to this country to face that kind of maelstrom?

THE COURT: And Mr. Gallina, we are going ahead with the hearing. You can bring them in and I will see who is coming to this country.

MR. GALLINA: I have also the problem of Mrs. Orsine,who is in Argentina. She also will not come to this country.

THE COURT: If the Government wants to permit her to come with some sort of immunity, then I am willing to do it. If the Government opposes her coming in Court, I will not permit it, Mr. Gallina, I will not on my own or as an action by the Court grant immunity if the Government in any way opposes it.

MR. DE PETRIS: Your Honor, I should be prepared to respond to that situation sometime next week.

THE COURT: If you oppose it in any form, even if you say, "The Government opposes it," I will not permit it, definitely not.

MR. GALLINA: The only additional element here that I would ask for your Honor's consideration on is that if your Honor will remember, the deposition that I am asking for is not an ex parte deposition, and that we could draw it up -- draw up the questions beforehand and --

THE COURT: You are here, and you should really be bringing these witnesses here to the Court.

MR. GALLINA: I can't, your Honor. They won't come.

THE COURT: Oh, yes, you can. If these little fellows, agents over there are walking around and for a few hundred dollars they did something for an American agent, I am sure you can get that man here. I'm sure you can get that man here.

MR. GALLINA: Your guarantees -- for instance, the guarantees of the United States carry very little weight at this time in the minds of the Orsines. Their conduct here --

THE COURT: I don't care what you feel the guarantees carry. If you want to bring them here you bring them here. If they feel that they should not be

here, that's their business. I am not inviting them.

MR. GALLINA: I can't get people who are not present in this country. I do not have any power of process over there.

THE COURT: Mr. Gallina, I suggest that that is the direction you should work in.

MR. GALLINA: We have worked in that direction.

THE COURT: Because that is the direction the Court is expecting you to work in, and in the event you are not successful, it may be to your client's detriment, but that's up to you.

MR. GALLINA: Well, your Honor, I would make the application then for immunity from arrest in this country, a guaranteed written immunity so that I can give this and send this to these individuals, not only to the Orsines, as to each and every witness that I bring.

THE COURT: You are bringing them out of the jail in Senegal, is that where you are bringing them from?

MR. GALLINA: I may have to bring witnesses --

THE COURT: Out of the jail?

MR. GALLINA: Out of the jail in Senegal.

THE COURT: I didn't know about that.

MR. GALLINA: I have witnesses that --

THE COURT: You are bringing them out of the jail?

MR. GALLINA: There are also possible witnesses --

THE COURT: Will the warden let them go, give them a good conduct pass?

MR. GALLINA: The position your Honor is putting me in is almost an impossible one. You know, I have to arrange --

THE COURT: It is not impossible --

MR. GALLINA: I have to arrange to take prisoners out of prisons in Senegal.

THE COURT: It may be improbable, but it is not impossible.

MR. GALLINA: It is impossible, I think, to convince the Senegalese officials to release prisoners from their prison to come here.

THE COURT: Let's, instead of taking any more time, let's let Mr. DePetris get some of his witnesses on.

MR. GALLINA: We will start then?

THE COURT: All right. Thank you.

MR. DE PETRIS: Does your Honor wish that the other witnesses that the Government intends to call be excluded from the courtroom?

THE COURT: Exclude all witnesses actually not

on the stand, and have them put in the witness room, and the others we will have now.

MR. DE PETRIS: The Government calls Louis Fields.

L O U I S G . F I E L D S , J R . , called as a witness, first being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. DE PETRIS:

Q Mr. Fields, by whom are you employed?

A By the United States Department of State.

Q In what capacity?

A I am the assistant legal advisor for special functional problems.

Q You are an attorney?

A I am, sir.

Q Mr. Fields, in connection with your position with the Department of State, did you have occasion to travel to Dakar, Senegal?

A I did, sir.

Q And do you recall approximately when that was?

A It was approximately August 22nd.

Q When you traveled to Senegal, did anyone accompany you?

A I was accompanied by Special Agent Anthony

Bocchichio.

Q He is with the Drug Enforcement Administration?

A Yes sir.

Q At the time you traveled from Dakar, Senegal -- excuse me, from the United States to Dakar, did you have any documents with you?

A I did, sir.

Q Would you explain to the Court what documents you had with you?

A I had what we call a package of extraditional documents.

Q Were you aware that prior to your leaving the United States for Dakar that Dominique Orsine had been arrested in Dakar?

A Yes sir.

Q Do you recall approximately when Mr. Orsine was arrested in Dakar?

A Yes sir. He was arrested on the morning of August 7, 1975.

Q And that was at Dakar?

A Yes sir.

Q What was the purpose of your trip from the United STates to Dakar?

A I was responding to the request of the Embassy of the United States in the Republic of Senegal, located in

Dakar.

Q Did you arrive in Dakar on August 22, 1975?

A Yes sir, I did.

Q And Special Agent Bocchichio was with you at that time?

A He was, sir.

Q Upon arriving in Dakar, would you explain to the Court where you went?

A Yes sir. We arrived in Dakar at approximately, sometime between 1:30 and 2:00 o'clock Dakar time.

We were met at the airport by a political officer of the Embassy, Mr. Allan McKee. We deplaned, found to our great consternation that our baggage had not made the turn with us at Paris, and we searched, hoping that our baggage would be found, for approximately an hour.

Finally, we were advised by the airport Pan Am representatives, the Air France representatives, that our baggage was not there and so we were taken by McKee in an Embassy car to the Taranga Hotel, where we had a room reserved.

Q After you arrived at the hotel, did there come a time when you left the hotel and traveled to meet anyone, any representative of the government of Senegal?

A Yes sir.

Q Was this on August 22?

A This was, sir.

Q With whom did you go when you went to the official of the government of Senegal?

A The charge d'affaires ad interim of the embassy came to the hotel, Mr. Allen Davis. He was accompanied by a political officer, Mr. McKee, and they explained to me that we had an appointment at the foreign ministry of the Republic of Senegal and that we would go there in order to be accompanied to the Ministry of Justice by a representative of the Foreign Ministry.

We did go with Mr. -- Mr. Bocchichio and myself accompanied the charge and the political officer in the car to the Foreign Ministry, approximately two blocks away from the hotel.

There we were received in the diplomatic receiving room on the second floor of the Ministry. We waited for a few minutes and then a gentleman, an officer of the Foreign Ministry, came into the reception room, indicated that he would accompany us to the Ministry, and we all departed.

Q To what ministry are you --

A We were at the Ministry of Foreign Affairs. The gentleman from the Foreign Affairs office was going to

accompany us to the Ministry of Justice.

Q Of the Republic of Senegal?

A That's correct, sir.

(continued next page)

Q Did you then proceed to the Ministry of Justice?

A After a brief delay when we were trapped in the elevator for about 20 minutes, which left us a little depleted of physical resources, having flown all night and spent 20 minutes in a Dakar elevator, in rather sub-tropical heat.

We were extracted from the elevator and did proceed in the Embassy car to the Ministry of Justice. We were now accompanied by the technical counselor for their Ministry of Foreign Affairs.

Q When you say "their," the Government of Senegal?

A That's correct, sir.

Q When you arrived at the Ministry of Justice, what happened?

A We proceeded to the office of the technical counselor, Mr. Mbacke, as I recall the name, who, in the absence from the country of Minister of Justice, as well as the Chief de Cabinet, which is the Director of the Cabinet, he was in effect the Acting Minister.

Mr. Mbacke had in his office at that time Mr. Sadibou Ndiaye, who was the Director of the Judiciary Police and also the Senegalese Interpol representative.

MR. De PETRIS: If I might just stop for the moment. I don't know whether the record is clear that

Mr. Fields has an interpreter. I don't know whether that was done at all, but I want to make the record clear.

THE COURT: Mr. Orsine has an interpreter since the time we began the discussion with counsel this morning. She has been sitting with him and translating.

Did we put her on the record?

MR. GALLINA: Before we go any further with that, could we have an understanding that this has to be interpreted and it takes a period of time for her to do that. Can we slow down the testimony quite a bit?

MR. De PETRIS: Miss Clancy is a simultaneous interpreter, I believe.

MR. GALLINA: I have to speak to the client, and she is talking about the last statement and I can't discuss it until there is a lag.

THE COURT: We will slow it down some. Is she on the record?

THE CLERK: No, Judge.

THE COURT: Swear her in and put it on the record.

THE CLERK: Miss Clancy, will you raise your right hand.

(Interpreter, Libya Clancy, duly sworn by the

Deputy Clerk to serve as official interpreter in this matter.)

BY MR. De PETRIS:

Q Mr. Fields, if we could just go back for a moment. When Mr. Orsine arrived in Dakar, Senegal, you were not there, is that correct?

A No, sir, that is correct.

Q Had a request been made of the Government of Senegal for Mr. Orsine's arrest upon his arrival?

A I instructed the Charge d' Affaires to request the Government of Senegal to make a provisional arrest of Mr. Orsine when his flight landed in Dakar as a transit point between Buenos Aires and East France.

THE COURT: What was the date of that request?

THE WITNESS: That request, your Honor, was --

THE COURT: He was arrested on August the 7th.

THE WITNESS: Yes, sir. The request had been made earlier, some one week earlier --

THE COURT: Probably around -- on or about August 1st?

THE WITNESS: I have some notes from my files.

THE COURT: Check your notes, please, and maybe that will help.

THE WITNESS: These are just my handwritten notes,

your Honor.

THE COURT: That's all right.

THE WITNESS: I had been advised by the Drug Enforcement Administration on July 30 --

MR. GALLINA: He is reading from the document. I have no objection so long as we mark it for identification.

THE COURT: Mark it for identification. I don't think there is any problem.

You made those notes yourself?

THE WITNESS: I did, sir.

THE CLERK: Notes of Mr. Fields marked Government Exhibit No. 1 for Identification.

(So marked.)

THE WITNESS: I made these notes primarily for the purposes of keeping dates and names straight.

THE COURT: I can appreciate that because there are a lot of dates involved.

THE WITNESS: Yes, sir, and a lot of very difficult to pronounce names.

THE COURT: I see.

THE WITNESS: I'm advised by a representative of the Drug Enforcement Administration July 30 that their information was that Mr. Orsine was leaving

Buenos Aires and his flight would transit Dakar en route to Nice, and they asked my opinion as to whether or not we could solicit the cooperation of the Government of Senegal to provide provisional arrest, and thereafter request that we, through either expulsion or extradition obtain custody of Mr. Orsine, who was a fugitive from justice.

Q Now, after receiving this notification from the Drug Enforcement Administration, you thereafter initiated a request of the Senegalese Government to provisionally arrest Dominique Orsine when he arrived in Dakar?

A Well, sir, I instructed the Embassy to make that request. I did not personally make that request.

Q But the instruction to the Embassy was by you?

A That's correct, sir.

MR. GALLINA: Could we have one moment?

THE COURT: Surely.

(Pause.)

BY MR. De PETRIS:

Q When you traveled to Dakar on August 22, 1975, you testified you had extradition papers with you, is that correct?

A That is correct, sir.

Q Were these to be delivered to the Government

of Senegal?

A They were, sir.

Q Now, the request that was made of the Senegalese Government was for an extradition or expulsion, is that correct?

A That is correct, sir.

Q Upon arriving at the Ministry of Justice on August 22, 1975, what if anything did you do?

A We were received by the technical counselor, Mr. Moctar Mbacke, his last name. He is the technical counsel for the Ministry of Justice, the Republic of Senegal.

Mr. Davis, our Charge d' Affaires, presented to him the documentation which I had personally carried with me to Senegal, and at that point Mr. Wane Barane, the technical counselor of the Foreign Ministry, who accompanied us to the Ministry of Justice, handed to the technical counsel Mbacke a letter or a note -- an official communication -- I am not prepared to transcribe whether he transmitted by note internally, but any way, he handed to him a communication from the Ministry of Foreign Affairs to the Ministry of Justice supporting the request of the United States Government.

Q Was this on August 22, 1975, this was the first contact you had had with a representative of the Government of Senegal; is that correct?

A That is correct, sir.

Q And Special Agent Bocchichio of the Drug Enforcement Administration was with you at that time, is that correct?

A Yes, sir.

Q When you met with the representative of the Ministry of Justice of the Republic of Senegal on August 22, 1975, were you advised that there had been a hearing in the court of the Republic of Senegal concerning Mr. Orsine?

A We had, sir.

Q And at the time of that hearing, did the Court for Republic of Senegal have the extradition papers which had been presented by you?

A No, sir, they had not.

Q Was there anything further that occurred during this meeting at the Ministry of Justice on August 22nd?

A At that meeting we were briefed by the Technical Counselor, Mbacke, concerning the status of the proceedings at that time. I would like to state at this time that almost -- well, almost the entire conversation at the Ministry was conducted in French. I am not fluent in French, though I do understand some of it, and so I cannot testify with precision as to what exactly was said.

Q Let me ask you this, Mr. Fields, had you seen

Mr. Orsine up until that time?

A No, sir.

Q Did you see Mr. Orsine on August 22?

A No, sir.

Q Was Special Agent Bocchichio with you during this entire period of time on August 22, 1975, from the time of your arrival in Dakar?

A Absolutely.

Q After this meeting at the Ministry of Justice, where did you go?

A We returned to the Embassy of the United States.

Q Did you have any further contact on that date with any member of the Government of -- any representative of the Republic of Senegal?

A We did not.

Q When you say, "we," are you referring to Special Agent Bocchichio, also?

A Yes, sir.

Q Moving on to August 23, 1975, which was a Saturday, did you have any contact on that date with a representative of the Republic of Senegal?

A Not personal contact, no, sir.

Q Was there a telephone communication between a representative of the Government of Senegal and the American

Embassy?

A There were several.

Q On the Saturday you are referring to?

A Yes, sir.

Q Was any decision made on Saturday, August 23, with respect to Mr. Orsine?

MR. GALLINA: Objection, your Honor. If he is going to testify to telephone conversations to which he was not a party, then I object, and I would --

THE COURT: He is asking if there was a decision made --

MR. GALLINA: It is obvious --

THE COURT: -- as to what they were going to do about Mr. Orsine or not do about him.

He is not talking about a telephone conversation.

MR. GALLINA: We are now supposed to be led to believe by innuendo that by virtue of the telephone conversation from the American Embassy to some official of the Senegalese Government various conduct was carried out, at least that's how I --

THE COURT: We are not on trial. I would like to hear as much of what went on as possible in order to make a proper finding in this particular situation.

MR. GALLINA: I will inquire on it, your Honor.

THE COURT: Thank you.

BY MR. De PETRIS:

Q Mr. Fields, on Saturday, August 23, 1975, were you advised as to whether or not the Government of Senegal was going to deliver Mr. Orsine to the American Government, or representatives of the United States Government?

A I was advised by the Charge d' Affaires at interim, yes.

Q Were you advised that a representative of the Government of Senegal would deliver Mr. Orsine to Agents of the United States Government at Dakar Airport at the first plane, American plane leaving Dakar for the United States?

A Yes, sir.

Q When was that plane leaving?

A It was scheduled to depart Dakar at 5 o'clock in the morning, on Monday, August the 25th.

Q And you received this communication on August 23, 1975, is that correct?

A Yes, sir.

Q On Saturday, August 23, 1975, did you have any personal contact with any representative of the Republic of Senegal?

A No, sir.

Q Was Special Agent Bocchichio with you during

Saturday, August 23, 1975?

A He was, sir, except for a -- on the 23rd, no, he was with me. He was with me the entire day and that evening.

Q Did there come a time when another agent of the Drug Enforcement Administration came to Dakar, Senegal?

A Yes, sir.

Q Who was that individual?

A That was Special Agent James Collier, C-o-l-l-i-e-r, who is stationed in Paris.

Q Did you request that Special Agent Collier come to Dakar, Senegal?

A Not by name, sir. I requested that an additional agent be sent to assist in accompanying Mr. Orsine to the United States, preferably an agent who was fluent in French, because we were advised that Mr. Orsine did not speak English, and I felt that -- I, of course, had absolutely no deputized authority to be an escort. I am a lawyer.

Therefore, I felt that he should be accompanied by two agents, preferably one of whom was fluent in French, and that my role was a very specific and particular role, representing the United States Government in my legal capacity.

Q I gather this request for a second agent was made after you learned that Mr. Orsine was going to be delivered

to Agents of the United States at Dakar Airport on Monday morning?

A Yes, sir.

Q Approximately when did Special Agent Collier arrive at Dakar, Senegal?

A He arrived -- my recollection is he arrived sometime around 2 a.m. on the morning of the 24th.

Q Which would be Sunday morning?

A That is correct, sir.

Q Did you have any contact with any representative of the Republic of Senegal on Sunday, August 24, 1975?

A No official representative of the Republic of Senegal.

Q When was the first time that you saw Dominique Orsine?

A Standing beside a Pan American flight on the morning of August 25 at some time very shortly after 5 a.m.

Q This was on Monday morning?

A Yes, sir.

Q What time was the plane scheduled to leave?

A It was scheduled to leave at 5, but it was late.

Q Did you, Special Agent Collier and Special Agent Bocchichio travel together to the airport at Dakar on Monday morning?

A We did, sir.

Q Approximately what time did that occur?

A The Embassy sent a car for us at the Taranga Hotel at 3 o'clock in the morning.

Q When you arrived at the airport, was Mr. Orsine there, Dominique Orsine, I am referring to?

A I did not see him, if he was.

Q Did there come a time when you saw Mr. Orsine?

A I first saw Mr. Orsine when he was brought in a police wagon beside the aircraft.

Q Would you relate to the Court what transpired when you first saw Mr. Orsine?

A We had been standing for some period of time awaiting the arrival of Mr. Orsine -- when I say "we," I mean myself, in the company of Special Agents Bocchichio and Collier, the Charge d' Affaires, Mr. Davis, was standing beside the aircraft waiting for the Senegalese to deliver Mr. Orsine to custody of Special Agent Bocchichio, who had the authority of the Secretary of State to perform the arrest.

The van arrived, as I say, sometime -- some minutes after five, the precise time I really do not recall.

Q Was it light or dark out at that time?

A Oh, It was dark.

Q Could you explain to the Court where in relation

to the airport terminal the plane was?

A It was parked some distance from the terminal.

Q Would you be able to estimate approximately how far from the terminal?

A It was far enough that I could not, while we were standing waiting for the arrival of Mr. Orsine -- the glass partition of the terminal -- I mean the terminal has a glass facade where you can see the embarkation area, and I could not distinguish people behind that glass partition from where that plane was parked, and I am far-sighted.

Q I gather that there were lights on in the terminal?

A Oh, yes.

Q Would you continue now with what happened when the van arrived with Mr. Orsine.

MR. GALLINA: One minute, your Honor.

THE COURT: One minute.

(Pause.)

BY MR. De PETRIS:

Q Could you explain to the Court what occurred when Mr. Orsine arrived in the vicinity of the plane?

A When the motorcade bringing Mr. Orsine arrived, which consisted of a small foreign-made vehicle first, passenger type, which preceded the police van, several individuals got

out of the small car, including the Director of the Judiciary Police, Mr. Ndiaye, whom I had met on Friday, and we went to the rear of the police van and they opened the door and Mr. Orsine lunged forward from the van.

My recollection is that there were two Sengegalese police officers trying to restrain him as he lunged forward. There were an assembled group of Senegalese police officials at the -- outside of the van, and Mr. Orsine was struggling and they moved him to the ramp of the first-class portion of the aircraft.

They proceeded to move him up the ramp, again attempting to restrain him as he was waving his arms and offering resistance.

Mr. Bocchichio, as I recall, was backing up the ramp attempting to fix handcuffs to Mr. Orsine while the Senegalese people were carrying him up the ramp. They carried him through the first-class part of the plane and into the rear of the plane where a seat was provided fairly close to the galley on the aircraft.

Q Did you follow the various representatives of the Senegalese Police and the Director of the Judiciary Police, and Special Agents Bocchichio and Collier into the aircraft?

A Yes, sir, I did.

Q And what happened when the entourage entered the aircraft?

A Well, they carried Mr. Orsine to the seat which he was to occupy. They put him in that seat. Special Agent Bocchichio was seated next to the window. Mr. Orsine was seated in the middle seat and Special Agent Collier was seated on the aisle seat.

This was in the tourist part of the aircraft, three seats abreast. And I was seated across the aisle from Special Agent Collier.

Q And did anything occur in the aircraft after Dominique Orsine was seated?

A I was advised by the Pan American representative that the Captain of the aircraft wished to see me in the front. And I accompanied the Pan Am representative and the Captain advised me that he had no intention of taking that aircraft off the ground with Mr. Orsine in his state as the Captain observed when they brought him on board --

Q When you say "the state," will you explain to us what you mean by that.

A Well, state of agitation, violence, waving his arms and screaming. And I explained to the Captain --

Q When you say screaming, do you mean screaming in pain or do you mean that he was --

MR. CUTLER: Objection.

THE COURT: Objection sustained. Tell us what the screaming was.

A He was screaming a word in French which, as I recall, was "Asi," meaning enough, enough.

Q What happened when you went to the pilot?

A Well --

Q The Captain of the aircraft.

A Well, I explained to the Captain the importance of returning his fugitive to the United States, and that I attempted to persuade the Captain that Mr. Orsine was, when I last saw him, seated in his seat; he was restrained by handcuffs. He was in the custody of two agents of the Drug Enforcement Administration, who were fully capable of assuring the safe conduct of Mr. Orsine to the United States.

I felt that there was no risk to the aircraft, but the Captain insisted that he was the Captain of the aircraft and that he would make the decision as to whether or not the plane would take off with Mr. Orsine.

And I asked him under what conditions would the aircraft take off, and he said only if Mr. Orsine is sedated.

(Continued on next page.)

Q And what happened at that point?

A I left the aircraft, went down to the plane side where the charge Davis was, and explained to Charge Davis that the Captain refused to take the plane off until Mr. Orsine was sedated, and asked him if he could ask the Senegalese to obtain a doctor to provide sedation.

BS:jk
1AM R3

He conferred with the Senegalese in French for a moment, came back and said there was no doctor readily available, and I said, "Well, isn't there an embassy doctor?"

He said there was not an embassy doctor, but there is a U.S. Peace Corps physician in the area who frequently provides medical services to the embassy.

And I instructed the charge at that point to go and bring the doctor to the aircraft. He departed and returned with the doctor. I met the doctor, explained to him the position of the pilot, of the captain of the aircraft, and I then accompanied the doctor up the second class ramp, took him to the seat where Mr. Orsine was seated.

He spoke to Mr. Orsine in French -- the doctor, I might add, is fluent in French -- and after a brief exchange of conversation, he administered a hypodermic to Mr. Orsine, and I took him to the forward part of the aircraft where he told the captain of the aircraft that he had administered a mild dose of vallium.

Q Do you recall the name of the Peace Corps doctor?

A Dr. Albert Green.

MR. DE PETRIS: Can I have this marked for identification?

MR. CUTLER: How do you spell that?

THE WITNESS: G-r-e-e-n.

THE CLERK: Three-page document of Dr. Green marked Government's Exhibit 2 for identification.

(So marked.)

BY MR. DE PETRIS:

Q Mr. Fields, I show you what has been marked as Government's Exhibit 2 for identification and ask you if you know what that document is?

A I do, sir.

Q What is that document?

A This is an affidavit of Dr. Green, subscribed to and sworn before the Vice Consul of the United States of America and authenticated by the United States Department of State, authenticating office, who authenticates the position of the Vice Consul, and thereby his authority to administer an oath.

MR. DE PETRIS: Your Honor, I would offer this document for the purposes of the hearing.

THE COURT: Show it to Mr. Gallina.

MR. DE PETRIS: It is an affidavit of the Peace Corps doctor.

MR. GALLINA: Objection, your Honor. Can we have a few minutes, your Honor, to have the interpreter read this?

THE COURT: Surely. Let's take a five-minute adjournment.

(Recess.)

(Witness resumes stand.)

MR. GALLINA: Your Honor, may I approach the bench at this time?

THE COURT: Surely.

MR. GALLINA: Your Honor, I am somewhat in a quandary at this point --

THE COURT: You are not in a quandary, you are just objecting.

MR. GALLINA: Yes, your Honor.

THE COURT: Based on your objection, this would be contrary to the way this hearing is being conducted, and --

MR. GALLINA: Your Honor, I at this time have considered the previous objection I entered, and even though it apparently has been received in evidence --

THE COURT: This has not been received in evidence.

MR. GALLINA: I thought so.

THE COURT: I said this was consistent with what the Court was not doing on this hearing -- I mean it is inconsistent with the Court's position --

MR. GALLINA: That's correct. If it is the Government's position, and it obviously is because the Government has gone forward and offered this into evidence, even after your Honor has strongly indicated your Honor's position on the record --

THE COURT: I wanted live witnesses.

MR. GALLINA: I understand. I would like to see that the -- if the Government thinks it is sufficient for witnesses to appear in the embassy and make a sworn statement, even without being cross-examined, and that that would be considered by your Honor, if the Government is of the position, and obviously it is, and it manifests and argues that that is its position by virtue of its offer, I would withdraw my objection and, of course, expect the same consideration for the defendant's position.

THE COURT: No. The Court does not have in mind to conduct this hearing based on affidavits submitted

by either side.

The Court's position is that the parties are to bring in the witnesses who will testify, and that the opposing party will have an opportunity to cross-examine the witness on exactly what the situation may have been.

Of course, if depositions are taken then this doctor could be deposed the same as any other witness that the Court might permit to be deposed. But at this time the exhibit is not received in evidence. It is marked for identification only.

BY MR. DE PETRIS:

Q Mr. Fields, after Dr. Green administered an injection to Mr. Orsine, he then proceeded to the Captain of the plane; is that correct?

A That's correct.

Q And what did Mr. Green say to the captain of the plane at that time?

A He advised the Captain that he had administered a mild tranquilizer, Valium, to Mr. Orsine, and that this would probably induce sleep for approximately two hours, and thereafter Mr. Orsine would be more relaxed, under less tension, and this would obviate any problems that the Captain might have had with respect to the apparent violence of Mr. Orsine when he was taken to his seat.

Q After this conversation with the Captain of the aircraft, Mr. Green then left the plane; is that correct?

A He did, in my company.

Q And what happened when Mr. Green left the aircraft?

A I went down the aircraft ramp. I thanked Dr. Green. I apologized for his having been aroused so early. I thanked Charge Davis, asked Charge Davis to have Dr. Green indicate, so I would have it for my files, what he had administered, in an official form, to Mr. Orsine, and handed to me my diplomatic pouch.

Q That is what has been marked Government's Exhibit 2 for identification; is that right?

A I assume so, pursuant to the instructions I gave to the Charge d'Affaires at the airport.

Q After you thanked the Charge d'Affaires, was Mr. Ndiaye still at the airport at that point?

A My recollection is that he was standing beside the plane.

Q Who is Mr. Ndiaye, again?

A He is the Director of the Judiciary Police of the Republic of Senegal, and he is the Senegalese representative for Interpol.

Q After the brief conversation with the Charge

d'Affaires, did you then re-enter the aircraft?

A I did, sir.

Q Did the plane then leave?

A It did, sir.

Q During the time that you were in Senegal, did you -- the hotel in which you stayed was what?

A The Taranga.

Q From the time you arrived on August 22, 1975 until the time of your departure from the Republic of Senegal on August 25, 1975, were you in the company of Special Agent Anthony Boechichio?

A We shared a double room.

Q I see.

A In the notel.

Q Was there any occasion when Special Agent Boechichio was not with you?

A The only time Special Agent Boechichio was not with me was a period on Sunday evening for approximately two hours when I accepted an invitation to dinner at the residence of the Charge, and Special Agents Boechichio and Collier had dinner at the Meridian Hotel.

Q For how long a period of time was this?

A Approximately two hours, maybe two and a half.

Q And this was on Sunday night?

A This is correct, sir. The rest of the time we were together completely.

Q And with respect to Special Agent Collier, from the time that he arrived on Sunday morning until the time the three of you left the Republic of Senegal on Monday, August 25, 1975, was Special Agent Collier in your presence during this entire period of time, with the exception of the two, two and a half hour period when they were out of your presence while you were at dinner at the Charge d'Affaires?

A He also occupied the same room. They brought a cot in. We had to lean heavily on the hotel authorities to produce a cot, which they finally did, and so the three of us occupied the same room.

Q After your arrival in Senegal and the delivery of the extradition papers, which have been prepared by the United States for the extradition of Dominique Orsine, was there a diplomatic note transmitted to the Senegalese Government concerning Agent Boechichio?

A There was, sir.

Q And would you relate to the Court what particular diplomatic note was and when that was delivered, approximately?

A Yes, sir. After our meeting with the Ministry of Justice, I telephoned Washington. I spoke to my colleague, Assistant Legal Adviser K. E. Malmborg, who is responsible for

the preparation of extradition documents for the Department, I asked him to cable to the embassy the secretary's authority for Mr. Boechicio to make an international arrest.

Q When you say the secretary, you are referring to the Secretary of State; isn't that correct?

A Yes, sir, I am.

Q Was such a diplomatic note transmitted to the Republic of Senegal?

A Pursuant to a cable received from Washington, the authority of Special Agent Boechichio was delivered by note verbale, No. 200 of the United States Embassy in the Republic of Senegal, over date of August 23, 1975, and personally delivered to the Foreign Ministry by Charge Davis. I recall it was delivered at 12:00 noon because after several phone calls they indicated there would be absolutely no one in the Foreign Ministry after twelve o'clock.

Q On that day?

A This would be on the 23rd.

Q Which would be a Saturday?

A That is correct.

Q The first time you saw Dominique Orsine was at the airport on August 25, 1975; is that correct, sir?

A That is correct.

Q When Mr. Orsini was brought to the airport on

August 25, 1975, from the time he arrived until the time the plane departed from the Republic of Senegal, did there come a time during that period when you had a conversation with Mr. Ndiaye?

A I spoke to him -- I greeted him when they first arrived at the plane. As we began to walk to the back of the van he stated that Mr. Orsine had injured himself prior -- as they were taking him out of the cell, and that they had taken him to the hospital where he was treated.

Q Did he also advise you as to the seriousness of the injury, whether or not it was serious, with respect to Mr. Orsine?

A I believe his description was it was superficial.

Q And did he advise you that he had been treated at the hospital after he had injured himself?

A He did.

Q Could you observe when you saw Mr. Orsine tee area where he had been injured?

A Mr. Orsine, when I first saw him, had a bandage around his right wrist. When he came out of the van I observed that his right wrist was wrapped in a bandage. I later observed the bandage and it appeared to a lawyer, who is not a doctor, to be a reasonably professional job of dressing.

Q Until the time of Mr. Orsine's arrival at the

airport, were you aware that he had been injured in any way?

A Prior to his arrival?

Q Yes.

A No, sir.

Q At the time that Mr. Orsine was delivered by the official representative of the Republic of Senegal, that being Mr. Ndiaye, to the custody of Special Agent Boechichio at the Dakar Airport, were you aware of whether or not Mr. Orsine had been expelled or extradited?

A No, sir, I had not.

Q After the plane left Dakar, was it a direct flight from Dakar to the United States?

A Yes, sir, it was.

Q And did it arrive at John F. Kennedy International Airport?

A It did, sir.

Q Had you made a request prior to the aircraft arriving in the United States, had you made a request that individuals meet your entourage at John F. Kennedy Airport when the plane arrived?

A I had instructed the Charge to send a cable immediately to Washington with information to the DEA headquarters there as well as New York of the departure of the aircraft and its approximate time of arrival.

While the aircraft was en route, and having observed Mr. Orsine's bandaged wrist, I asked the Captain of the aircraft to communicate to New York when we got within communication range, and have those people -- I assume the Drug Enforcement AGency representative -- to meet us, have a doctor there to attend Mr. Orsine, to look at the wound and see if it needed any further attention.

It did not appear tr me to need it at that time. I at no time took the bandage off, but I wanted an American doctor to take a look at Mr. Orsine's wound as soon as we arrived in New York.

Q And when you arrived in New York was there a doctor at the airport?

A I recall seeing one. I was with Mr. Orsine. I lost contact with him at a brief interval after the plane arrived.

I next saw Mr. Orsine as he was seated in the Immigration area of the airport. I had trailed behind him. The agents had taken him to Immigration area and I next saw him seated in the Immigration area where he was being paroled into the United States by the United States Immigration Service.

Q Mr. Fields, during the course of time that you were in Senegal, or since that time, have you learned whether

or not -- has anyone ever told you that Mr. Orsine, or did you ever observe Mr. Orsine being struck by anyone, either a representative of the United States or a representative of the Government of Senegal, any police official or anyone?

A At no time, sir.

Q Did you observe any marks on Mr. Orsine, unusual marks, other than the bandage that was on his wrist?

A I did not, sir.

Q Has the Government of the United States received a formal protest from the Government of Senegal in connection with the extradition or expulsion of Dominique Orsine?

A It has not.

Q Has the United States Government received a formal protest from the Government of France in connection with the extradition or expulsion of Mr. Orsine from Senegal to the United States?

A Not to my knowledge.

Q To your knowledge, has the Government of Senegal received a formal protest from the Government of France concerning the extradition or expulsion of Mr. Orsine from the Republic of Senegal to the United States?

A Not to my knowledge.

MR. DE PETRIS: I have no further questions.

THE COURT: Mr. DePetris, go into the area of anyone he might have hired or directed to do anything concerning Mr. Orsine -- go into that area, please.

Q To your knowledge, as you were the official representative of the Government of the United States in connection with the extradition or expulsion of Mr. Orsine from the Republic of Senegal to the United States-- is that correct?

A Obviously, the Charge d'Affaires is the senior American representative in the Republic of Senegal. I was dispatched from the Department of State in Washington to provide legal services for the embassy for the purposes of any problem that might arise in connection with that request.

Q Did you in your capacity as a representative of the United States, hire anyone in the Republic of Senegal, whether he be a citizen of the Republic of Senegal or a citizen of any other country, to perform any acts on behalf of the United States Government?

A Absolutely not.

Q In connection with Mr. Orsine?

A Absolutely not.

Q To your knowledge, did any other representative of the United States retain or hire anyone to perform any acts in connection with the case of Dominique Orsine in the

Republic of Senegal?

A Not to my knowledge or belief.

MR. DE PETRIS: I have no further questions.

THE COURT: Thank you.

Cross-examine, Mr. Gallina.

MR. GALLINA: May we have a slight recess in order to put together some --

THE COURT: We will take a slight recess.

MR. GALLINA: Can we have lunch now, your Honor?

THE COURT: No. You will have to complete as much as you can, and you can come in tomorrow morning and I will give you from 11:00 o'clock tomorrow through as long as you want to go.

MR. GALLINA: Fine.

THE COURT: I have a case on trial, a jury case at 2:00 o'clock, so I am going to take as much as I can do today and then we can continue.

(Recess.)

(continued next page)

(After recess.)

MR. De PETRIS: Your Honor, I have one document I would offer under Title 18, an official record of the Republic of Senegal in French and then, there is the English translation of that and it is the medical record concerning the treatment of Dominique Orsine on August 25, 1975.

MR. GALLINA: If I am to believe and understand the translation -- if we can have it marked for identification first.

THE COURT: Mark it.

MR. De PETRIS: There are two documents actually; one in French and one in English.

THE COURT: Mark them both for identification.

THE CLERK: Which is the English one first?

MR. De PETRIS: This is the English one but this is the actual document and this is the translation (indicating).

MR. GALLINA: I'm not sure that this is what counsel purports it to be. Counsel purports it to be a copy of the medical record.

It apparently is a statement of an individual who is in charge of the hospital and it is not at all a medical record.

This is a conclusionary statement --

MR. De PETRIS: It's an official record.

THE COURT: Is it by a medical doctor?

MR. De PETRIS: Dr. J. Rodier.

MR.GALLINA: If I may get a couple of words in -- from the document, it is obvious it is not the doctor who treated the defendant. It is not the medical record whic' should have been very easy to obtain nor is it the medical record of the treatment which I would not object to.

This is just a self-serving conclusionary statement going into legal aspects --

THE COURT: Is he the doctor in charge of the hospital?

MR. GALLINA: He is an assistant in surgery of Armed Forces Hospital.

MR. De PETRIS: That's a Government hospital of the Republic of Senegal where Mr. Orsine was treated.

THE COURT: Let me see the record.

(Documents handed to court.)

THE COURT: All right. This seems to be a medical, legal certificate by Dr. J. Rodier, Assistant in Surgery of Armed Forces Hospitals.

You object?

MR. GALLINA: I would object that it is not the best evidence. The best evidence would be the medical record.

THE COURT: It is received on behalf of the Government.

Mark these two exhibits in evidence on behalf of the Government.

THE CLERK: Three-page document, medical certificate in French marked Government's Exhibit No. 3 in Evidence.

(So marked.)

THE CLERK: Three-page document, medical certificate in English, marked Government Exhibit No. 4 in Evidence.

(So marked.)

THE COURT: Are you ready to cross-examine, Mr. Gallina?

MR. GALLINA: Yes, your Honor.

L O U I S G . F I E L D S , having been previously duly sworn by the Clerk of the Court, resumed the witness stand and further testified as follows:

CROSS-EXAMINATION

BY MR. GALLINA:

THE COURT: You may proceed, Mr. Gallina.

MR. GALLINA: Thank you, your Honor.

Q Good afternoon, Mr. Fields. I am Mr. Gallina, the Attorney for Mr. Orsine.

A Yes, sir.

Q Mr. Fields, when is it that you first came into any knowledge concerning Mr. Orsine?

A On July the 30th, 1975.

Q And where did you get this knowledge from?

A From representatives of the Drug Enforcement Administration Headquarters in Washington.

Q Who was it that communicated any knowledge concerning Mr. Orsine to you?

A Knowledge concerning Mr. Orsine was communicated to me by one Mr. Ron Provencher.

Q Would you spell that, please.

A I believe it is P-r-o-v-e-n-c-h-e-r. I think that's the correct spelling.

THE COURT: Mr. Gallina, all of this we have gotten. We have been through all of this.

Now, if your position is credibility, I don't think, under these circumstances, it has much bearing.

Really, we are interested in the treatment your client may have received; if there was any mistreatment and whether or not Government Agents were responsible.

This is really what we are interested in. But, to go through all of this again. -- it's really a repetition that I don't need.

MR. GALLINA: I understand that, your Honor. However, your Honor, there are certain mandates under the trilogy of cases of Toscanino, Lujan and Leira and one of the aspects is that I am required to offer some evidence concerning that the agents of the Federal Government instigated, aided or participated in the abduction or surrounding conduct.

Also, there was an illegal abduction of the defendant --

THE COURT: That's the area. Whether he got the knowledge three weeks before or when he got the knowledge is not of interest to me. I want you to address yourself exactly to what you just put before the Court.

MR. GALLINA: I intend to. I pursue this questioning only toward that directive, your Honor.

THE COURT: But you are starting off in the beginning and we have been all through it.

Do you want him to read you his notes so you will be brought up to date for the second time? Do you want him to read them to you?

MR. GALLINA: No.

THE COURT: It is just as good as that because that is about what he is doing.

MR. GALLINA: No, I want to inquire into the efforts of the Government to obtain a legal -- or to legally obtain the presence of Mr. Orsine into this country and I wish to show your Honor through these witnesses that wasn't possible and they were in fact rebuffed by the Senegalese Government --

MR. De PETRIS: Mr. Gallina is assuming that the Government of the United States obtained Mr. Orsine illegally and that has not been shown at all.

THE COURT: I don't think that has been shown and I don't think that is going to come out. If you take a week with this man, I don't think that will be what you get.

MR. GALLINA: If your Honor will give me an opportunity --

THE COURT: I am going to give you an opportunity but you see, things I have heard -- if you want him to read his notes to you he will. They are in front of him. He will tell you the same thing he said before.

MR. GALLINA: I intend to only cross-examine on

the matters to which he testified and amplify them.

THE COURT: Go ahead, Mr. Gallina, go right ahead.

CROSS-EXAMINATION

BY MR. GALLINA (Continuing):

Q Mr. Fields, in that communication, was that an oral or a written communication?

A It was a telephone call.

Q Did he indicate to you how he came to know that Mr. Orsine was leaving Argentina?

MR. De PETRIS: Objection.

THE COURT: Sustained.

Don't answer it.

Q Did he indicate to you at that time that he had taken certain legal steps in Argentina in an attempt to gain --

THE COURT: Mr. Gallina, I am really not interested as to what happened in Argentina. If you want to ask such questions, I will sustain objection if the questions are objected to. I really don't want to know about that.

MR. GALLINA: As an offer of proof I intend to show, through this and other witnesses, that the United States Government attempted to obtain legal

process to get Mr. Orsine into this country and was rebuffed in other countries.

THE COURT: You mean other countries --

MR. GALLINA: Not just other countries, no.

MR. De PETRIS: Objection.

THE COURT: Sustained.

MR. GALLINA: Let's jump to one point --

THE COURT: Don't jump. Take your time and get there. Take it slowly.

Q What was it that the telephone communication was -- what were you told?

A Which telephone communication?

Q This first one you received?

A I was told the Drug Enforcement Administration was advised that Mr. Orsine was leaving Buenos Aires on a flight bound for Nice, France that would transit in Dakar.

Q What date was that flight to arrive in Dakar?

A It is my recollection that he was to have left the following morning. I guess it would have been the first of August.

Q Now, when was it, actually, that Mr. Orsini arrived in Dakar?

A On August the 7th.

Q So, he did not leave on the first; is that

correct?

THE COURT: He wasn't there until the 22nd.

Q Well, you testified that Mr. Orsini arrived on the 7th of August; is that correct?

A That is correct.

THE COURT: That is the information he has.

Q How do you know that?

A Because I received an official notification from the Embassy of the United States.

Q That he was arriving on the 7th?

A Absolutely.

Q And you know also from your communications with the Embassy that he did not arrive on the date you originally expected him to and that was the first?

A Correct.

(Continued on next page.)

IG:BD 2am2

Fields-cross

CROSS-EXAMINATION

BY MR. GALLINA (Continued):

Q So, you had seven days to prepare any extradition order and request of the Senegalese government for the expulsion or extradition of Mr. Orsine; is that correct?

A That is correct.

THE COURT: Mr. Gallina, are you claiming that his actions are covered by the speedy trial act?

MR. GALLINA: No, no, your Honor.

I am just trying to show that the Government had sufficient time if they are taking the position now that they were forced by the telescoping events occurring some 22 to 25 days later and by the momentum of events occurring within a very short period of time for doing things which might be reasonable under such circumstances, then, I am trying to show to the Court --

THE COURT: Perhaps if you were in charge they would have acted faster. Maybe they are not as swift as you are. Perhaps they would have acted faster under your direction but that didn't happen to be the case.

Q On that day when that was communicated to you, did you or any other member of the State Department, to your knowledge, take any steps to effectuate the extradition or

expulsion of Mr. Orsine on his arrival in Senegal?

A Yes sir.

Q On what date did you take that action?

A I placed a phone call to the embassy in Dakar, advised them of the information, requested the embassy to make contact with the government of Senegal to make a provisional arrest of Mr. Orsine when he landed and the United States was prepared to formally request the extradition or expulsion of Mr. Orsine to the United States.

Q When did you make that call?

A My recollection is that I made it within a matter of several hours after I received the original information.

Q That is on the 30th of July, 1975; is that correct?

A That is correct.

Q And whom did you speak to in the embassy?

A The Marine Guard in the embassy.

Q What is his name?

A I do not recall his name.

Q Now, a Marine Guard -- an officer or enlisted man?

A There are no officers in the Marine Guard establishment.

Q What did you tell this Marine Guard?

A I called the embassy, Mr. Gallina. The embassy was closed. It is usual in small posts for the Marine Guard to answer all official phone calls of the embassy and then transfer the call to whatever officer is appropriate.

Q Was that call transferred?

A It was not because at that particular time there were rains that had obstructed the telephone communications to the residence of Mr. Davis.

Q How do you know this for a fact?

A The Marine Guard told me on the phone.

Q The Marine Guard told you that he did not transfer the communication?

A He told me he tried to ring the residence on another phone. He then even tried with radio equipment to make contact with Mr. Davis. He was unable to. Then, I confirmed this by official State Department cable.

Q What day did you do that?

A I assume the same date.

Q You, of course -- or the State Department, have certain rules and regulations requiring that such communications, telephone calls, be logged?

A I am not aware of that requirement.

Q You made no record of any kind of that

telephone call you state you made to a Marine Guard?

A I confirmed it by diplomatic cable.

Q Do you have a copy of that cable?

A I may have it with me.

Q You say you confirmed it by cable on the same day and that would be July 30th, 1975?

A Yes.

Q And that cable contains the statements, in essence, you just testified to?

A That is correct.

Q Who was that cable to?

MR. DE PETRIS: Objection to all of this. I don't see the relevancy with respect to the burden of Mr. Gallina as to what he has to show.

THE COURT: Sustained.

Don't answer the question.

MR. GALLINA: Exception, your Honor, of course.

Q Did you take any other steps or endeavor to take any other steps to legally obtain the custody of Mr. Orsine prior to your going to Dakar?

A Not to my knowledge.

Q In other words, did you receive any reply to your telegram?

A Oh, indeed.

to exhaust administrative remedies and you are taking the long way round and requiring the Government to do this before they take other measures you think they should not have taken to do what you say was done here.

MR. GALLINA: I am trying to show that the Government took certain steps and was rebuffed and that they had reasonable time to take those steps.

THE COURT: You seem to be taking the long way round. I can't prevent that but I don't think that will be productive of anything.

MR. GALLINA: If you would allow me to continue for a short while.

THE COURT: We only have a short while.

MR. GALLINA: I will not persist if it is not fruitful.

Q Mr. Fields, there were communications, were there not, from the Senegalese government to yourself?

A Not to myself.

Q To the American Government?

A Yes.

Q In what form were those communications?

A Sir, they were communications between the United States charge d'affairs ad interim Mr. Davis and the Senegalese were prepared to cooperate on the first of August.

That cooperation was frustrated when Mr. Orsine did not take the flight.

Because of the willingness of the government of Senegal to cooperate with the United States in its international efforts to control narcotic trafficking I caused Acting Secretary of State Robert S. Ingersoll to call Foreign Minister Barane's secretary thanking them for their willingness to cooperate in this international act.

Q I am asking you, was there a request for the extradition at any time prior to your going to Senegal by the United States Government?

A Of course.

Q And was that request answered by the Senegalese government?

A Sir, in cases like this --

Q Just yes or no --

THE COURT: No. Let him answer.

You are opening up new fields, and if you wish to explore them the Court wants a full explanation, not yes or no. This is not like cross-examination and we want a yes or no.

If you are going to open up new fields I want a full explanation.

MR. GALLINA: I withdraw the objection.

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Fields-cross

THE COURT: Give us a full answer. I want to hear a full explanation.

MR. GALLINA: I want to hear a full explanation too.

THE WITNESS: If your Honor please --

THE COURT: Give us your explanation. Just give us your explanation as short as possible.

A In matters like that it is the normal --

MR. GALLINA: Objection to "normal." Allow him to testify to the facts.

THE COURT: You are examining, cross-examining, testifying, opening up new fields. Let him say a few words.

A I have testified before other United States courts as an expert in this field. It is customary to request provisional arrest and then after provisional arrest is made within as prompt a period of time as possible, the United States prepares its legal basis on which it asks the foreign government to cooperate by expulsion or extradition. This is precisely what was done in this case.

THE COURT: Thank you.

Q Would you testify as to what happened in this case, not the usual or customery methods or practices. All I want to know is what happened, what communications were

there, what replies, telegrams, telephone calls, et cetera, were there, concerning that issue.

THE COURT: You want him to read it for you?

MR. GALLINA: No.

THE COURT: That way you get it all directly as fast and quickly as possible.

MR. GALLINA: If he was to read it I'm satisfied with that.

THE COURT: If you want to read it, you can read it.

A In this case, Mr. Gallina and your Honor, we requested provisional arrest --

Q When was that?

A It was on July 30th.

Q All right.

A The Senegalese indicated to your Charge they were willing to assist the United States Government.

Q In what way did they indicate that?

A They were prepared to perform a provisional arrest of Mr. Orsine when his plane landed in Dakar.

Q Was that by telegram, written communication?

A My own knowledge is it was communicated to me by diplomatic cable at the Department of State.

Q Obviously there was a writing in some fashion?

A Yes.

Q Do you have a copy of that cable?

A Yes.

Q Do you have it with you today?

A I can't guarantee that. I have my file and I may or may not have it with me.

Q Would you look for us --

MR. DE PETRIS: Objection.

THE COURT: Sustained.

I think I can assume that Mr. Fields had it and acted on that. I can assume these things. I am not going into the credibility as some collateral issue on this point on what is before the Court. I don't think I have to do that and I am not going to do it.

MR. GALLINA: I would ask your Honor, since these are matters now coming to my attention for the first time, I would ask your Honor to order, in lieu of my subpoenaing these documents, order their production for my examination for whatever assistance they may be of to me in preparing for this hearing.

THE COURT: Mr. Gallina, you are going into the background of how the United States went about this thing and really, this hearing is specifically on how

they apprehended Mr. Orsine, the circumstances under which they apprehended him. To go into the background and what diplomat sent this cable and what diplomat sent that cable -- I don't think that is really the issue in this hearing.

MR. GALLINA: Well, your Honor, the documents will corroborate or will uncorroborate or contradict the testimony --

THE COURT: Is it your position that the credibility of the State Department officials in this hearing is one of the issues before the Court?

MR. GALLINA: Oh, yes, your Honor.

THE COURT: Well, if that is your position you had better take another issue because the Court is not going at it in that fashion. The Court is not going to take it in that fashion. YOu have been hinting around that and you finally said it. But, the Court is not taking it in that fashion.

You can get to the issue and if you don't get to the issue properly the Court is going to go through this hearing without you getting to your issues and that is my position for this hearing because if you are going into credibility and claiming every State Department official who comes before this

Court must be a liar, I don't agree with that and I am not willing to have it from you either. That is the position you are taking.

MR. GALLINA: I don't mean to imply or impune Mr. Fields' truth-telling --

THECOURT: You don't mean to do it but you want to look under his fingernails and under the dirt that may come up on the telegrams which he might bring in here for the purpose of seeing if there is not a little dirt under there.

MR. GALLINA: I don't think that is a position that an adversary takes unreasonably.

THE COURT: You are taking it unreasonably at this time and I don't like it.

(continued next page)

CROSS-EXAMINATION

BY MR. GALLINA (Continuing):

Q Were you present in the Dakar court at any time?

A No, sir, I wasn't.

Q Do you know when Mr. Orsine was ordered released from the custody of the Senegalese Police authorities by the Dakar Court?

A I was advised he was released approximately noon on the 23rd.

Q Now, did the United States Government have any representatives to your knowledge in the court in Dakar?

A Not to my knowledge, sir.

Q Well, were you made known -- you were present in Dakar on the 23rd --

THE COURT: If he wasn't present and doesn't know what happened in the court, we are not going to cross-examine on what he doesn't know. If he wasn't present and doesn't know, I don't see why we should cross-examine him as to that.

MR. GALLINA: I am going to ask him that specifically.

THE COURT: Ask him.

Q Were you present in Dakar on the 22nd or 23rd of August, 1975?

A Yes, sir, I was.

Q Did you speak to anyone, either a representative of the Senegalese Government or any representative of our Government or any other person concerning the decision of the Court?

A I was advised on the 22nd that the Court had not made its decision.

Q Who advised you of that?

A The Technical Counselor of the Ministry of Justice, Mr. Moctar Mbacke.

Q And he told you that there was no decision made?

A That is what I was given to believe.

Q When did you realize there had been a decision made?

A On Saturday. We were advised that the Court would make its decision on Saturday.

Q When did you receive that communication?

A During our conversation -- during our conference with Mr. Mbacke Moctar of the Ministry of Justice.

Q Who was present?

A The Charge, Mr. Davis; Technical Counselor, Ministry of Justice, Mbacke Moctar; Technical Counselor, Minister of Foreign Affairs, Wane Barane; the Director of the Judicial Police, Sadibou Ndiaye, Mr. McKee and Agent Bocchichio.

Q And what did he tell you at that time?

A Who?

Q Concerning the decision of the Court?

A What did who tell me?

Q Mr. -- the Minister of Justice.

A The Technical Counselor, sir.

Q Yes?

A He advised me that the Court was considering the technical position with respect to the arrest of Mr. Orsine in the airport.

It is my recollection that he indicated that the case had been heard and the Court had the matter under advisement.

The reason I say that is because he advised us that he did not know whether or not he could present the extradition documents which I carried to Dakar, arriving on the 22nd, which were presented to him by the Charge on the afternoon of the 22nd at approximately 5:15 p.m. -- whether he could get those before the Court so they could be considered in connection with the Court's decision respecting the legal merits of the arrest of Mr. Orsine on the 7th.

Q Now, he told you that -- subsequently you learned there was a decision made on the 23rd; is that correct?

A Yes, sir.

Q And you had presented your documents requesting

extradition on the 22nd, had you not?

A Yes.

Q And did he not tell you that the Court held that whereas by the terms of Article --

THE COURT: You are reading from a certified copy of the Court's record?

MR. GALLINA: I am asking --

THE COURT: Please, Mr. Gallina. You are reading and I am looking at you and you are reading from a certified copy of the Court's record?

MR. GALLINA: No. I do not read French. I am reading from a certified translation by the translation service.

Q And you have both the English and French in front of you?

MR. GALLINA: I have the English and French in front of me and the French document is not certified.

THE COURT: Isn't that entire document certified?

MR. GALLINA: No, only the translation document.

THE COURT: And you are reading from that?

MR. GALLINA: Yes.

THE COURT: Now, you are going to advise Mr. Fields and see whether or not he was advised as per the Court's decision?

MR. GALLINA: That is correct.

THE COURT: Well, ask him.

Q Weren't you advised that the Court stated that extradition shall be denied if the offense was committed outside the territory of the state making the request, by a person foreign to said state; that legislation of the state being petitioned does not authorize --

A No, I was not advised as to that decision.

Q Weren't you advised that the Court had made that decision on that day which is the 23rd of August, 1975?

A No, sir. I was advised that the Court had released Mr. Orsine for the reasons that the arrest was made in the transit lounge of the Dakar Airport and therefore wasn't under the sovereignty of Senegal, a principle I know which is totally rejected under international law.

In fact, I asked leave of the Minister to argue that point if the Court would entertain my presence as an expert witness but he said he didn't know what the state of the proceedings were, whether he could either introduce the extradition documents.

Q Were you not advised that the Court held that they had certain provisions of law under the provisions of Article 19 of Law 71-77 of December 28, 1971, relative to extradition?

"Whereas, by the terms of this article" -- they stated -- "in case of emergency and upon direct request of the legal authorities of the country making the request, the District Attorneys may, upon simple notice, transmitted either by mail or by any materially equivalent method, of the existence of the documents indicated in Article 9, order the temporary arrest of the foreigner." And they further stated, "Whereas it appears therefore, from that," --

THE COURT: You are telling him there are legal decisions. Ask him was he advised at to this.

Q Were you advised further as to this?

THE COURT: Were you advised, Mr. Fields?

THE WITNESS: No, sir.

I thought Mr. Gallina had not finished the question.

THE COURT: Question, Mr. Gallina.

Q Didn't they tell you that the Court basically founded its decision on the fact that it was absolutely necessary to know the place where the action was committed?

A No, sir.

Q In other words, under Senegalese law, extradition could not be permitted unless the requesting state could state affirmatively that the crimes were committed in that state and since the warrants and everything else submitted to

the Court made it clear that Mr. Orsine had never been in America -- Mr. Orsine had committed crimes or certain acts in Argentina in violation of American law -- that under their laws of extradition and their agreements with the United States, he could not be released. You were advised of that fact, weren't you?

A No.

MR. De PETRIS: Objection.

THE COURT: He gave the answer. He said, "No."

Q So, you say at this time that you were not advised --

THE COURT: Mr. Gallina, he answered you half a dozen times and you read the record fully.

THE WITNESS: If I may make a statement --

MR. GALLINA: Certainly, please.

THE WITNESS: I was provided a copy in French of the Domestic Extradition Laws of the Republic of Senegal.

I had it translated subsequently but I was never advised that this Court or any Court ever treated the issue of the extradition of Mr. Orsine.

THE COURT: You offered to present yourself as an expert in international law?

THE WITNESS: Yes, sir.

THE COURT: You never went to court?

THE WITNESS: No, sir, I did not.

Q Did the American Government in any fashion have any representative present in the Senegalese court at any time?

A Not to my knowledge, sir.

Q Now, in the early morning hours of the 23rd of August which was a Monday morning; is that correct?

A 25, sir.

Q I'm sorry -- the early morning hours, are you telling this Court that the two agents; that is, Baccio --

A Bocchichio.

Q How is that spelled?

MR. De PETRIS: If I may -- B-o-c-c-h-i-c-h-i-o.

Q And Agent --

A Collier, C-o-l-l-i-e-r.

Q Agent Bocchichio and Agent Collier, they were continuously present with you or in your presence at all times?

A We were in the hotel room from approximately 10 p.m. on the 24th after they returned from dinner and I returned from my engagement at the Charge's residence, until the hotel called to wake us at approximately 2 a.m. on the morning of the 25th.

We were downstairs and available for the Embassy car at 3 a.m. when we were picked up from the hotel and taken to the residence of the Charge who got in his car and the two cars proceeded to the airport.

Q In other words, they were not out of your presence at any time from the time you went to sleep at 10 o'clock at night until the time you got to the airport; is that correct?

A I am getting to that point, sir.

In the airport terminal, Charge Davis, because we did not know where the Senegalese would deliver Mr. Orsine; whether the front door of the airport terminal or the aircraft -- Charge Davis suggested that I go through the Immigration procedures and sit in the lounge, the departure lounge.

The wife of the United States Ambassador to another African country and her son were traveling and they were the guests of the Charge and I sat with them.

Agents Bocchichio and Collier remained in the front part of the airport. From the transit area I could observe them standing there. They were not in my immediate presence.

Q Well, not in your immediate presence but they were in your view?

A For a period of time they might have walked out of my line of sight or I might have been talking with the wife

for an instant or two. I couldn't state they were constantly in my view.

(Continued on next page.)

BS:BD 3pm11

Q Now, the defendant at that time was being brought from where, do you recall?

A No sir, I do not. From someplace where the Senegalese had custody of him.

Q Did you know whether or not that was a police station or a police headquarters or a hospital or wherever it was?

A It was my recollection that they indicated to us on Saturday that he would be held at the police headquarters until the plane.

Q When was he injured, to your knowledge, on his wrist?

A According to the statement of Director Ndiaye, he was injured at the time that they came into his cell to start taking him to the airport.

Q That was approximately what time?

A I have no idea, sir.

Q When they took him by police van, it is your statement unequivocally at this point that neither one of these two agents were in that police van, is that correct?

A Absolutely.

Q Who was the DEA agent who was assigned as liaison to the American Embassy in Dakar?

A There is none.

Q There are no officials assigned from DEA in any fashion to the American Embassy?

A There are none.

Q Were there any other agents present in the country during this period of time that you were present in the country?

A Other than agents Bocchichio and Collier, certainly not to my knowledge.

Q Not to your knowledge. Are you saying that there were no other agents or only that you didn't --

THE COURT: He said not to his knowledge, Mr. Gallina.

A I am not the senior American official in the country. That is the charge d'affaires, in the absence of the ambassador.

Q Did the charge d'affaires ever mention to you that there might have been other agents present?

A No sir.

Q Did you ever hear either Agent Bocchichio or Agent Collier converse with other agents by radio who were present in the van?

A No sir.

Q In English?

A No sir.

Q Did either one of these agents have any type of small portable radio communication device at any time?

A No sir, they did not.

Q Or even a fixed -- did they ever speak over a fixed device, some fixed radio?

A Not to my knowledge or observation.

Q To your knowledge, was there any other representatives of the United States Government, whether they be Marines or CIA personnel, or any other type of personnel who were assisting the Senegalese or assisting yourself or Mr. Davis in these procedures during the period of time you were there?

A No sir.

Q There were none?

A Not to my knowledge or observation.

Q And to your knowledge there were no Americans who were working for or on behalf of the American Government who were present in the van?

A No sir.

Q Or in the automobile just preceding the van?

A No sir. They appeared to be all Senegalese.

Q Did you make any applications for any funds; in other words, submit any vouchers at any time, concerning the matters about which you have been testifying?

A My voucher for reimbursement of my travel expenses to Dakar is the only one I have made.

Q And that was just your plane fare or whatever?

A My plane fare was obtained by the GTC, Government Transportation Request. And the other is reimbursement for my out-of-pocket expenses for my hotel and -- we get a per diem, as you know --

Q Did you approve or have knowledge of any other expenditures besides these simple transportation expenditures for yourself, for any other person, agents, et cetera?

A No sir.

Q Did you give to either of the DEA agents any monies?

A No sir.

Q Did they indicate to you that there had been any expenditures made to the Senegalese officials, any monies given to the SEnegalese officials?

A No sir.

Q The baggage that you say was lost on the airplane, what did that contain?

A To clarify one point, lest it be misunderstood, Mr. Bocchichio put the hotel charge on his American Express card and I gave him SEnegalese francs to cover my portion of the hotel room.

That's the only money that was exchanged between me and either agents Bochichio or Collier.

Q Was Mr. Bocchichio operating under his true name in Senegal?

A Indeed, sir.

Q He was using that name?

A He was, yes, sir.

Q Was Mr. Collier using his own name?

A To the best of my -- I never heard them use any other names.

Q That's all I want to know. Did they use any other type of name?

A No.

Q You state that these notes we have marked for identification which are in front of you, can I see those for a second? These are a compilation of names and events and dates, is that correct?

A Yes.

Q They were probably compiled from some rough notes, is that correct?

A They were compiled from my official file.

Q Your official file?

A Yes sir.

Q In other words, that was compiled from other

documents, is that correct?

A Yes sir.

Q Do you have those documents with you today?

A I do.

MR. GALLINA: Could we have them marked for identification at this time?

MR. DE PETRIS: Objection.

THE COURT: Sustained.

MR. GALLINA: Your Honor, I would ask that, unless your Honor requires me to serve a subpoena, I will do that in substitution of that and ask for a production of those documents.

THE COURT: Production of what?

MR. GALLINA: These documents underlying the testimony of this witness. This witness has testified from a document which is a compilation of these other documents. He does not have an independent memory.

I would like to have an opportunity to examine those documents.

MR. DE PETRIS: Your Honor, the witness testified that from the other documents he obtained the exact dates and times, but not the substance of the transactions, the things to which he has testified.

THE COURT: I will sustain the objection.

Your next question.

BY MR. GALLINA:

Q Do you have a copy of the extradition request that you presented to the Senegalese government?

A Yes, I do.

THE COURT: Give him that document.

MR. DE PETRIS: You are referring to the extradition papers?

THE COURT: Extradition or expulsion, give him those papers.

MR. GALLINA: And the supporting documents.

THE WITNESS: I have a Xerox copy of my recollection of what is the package that I delivered to the Senegalese. I am having to rely on my secretary that it is the complete package. I did not make a personal comparison.

Q Do you have that with you?

A It should be in my briefcase.

MR. GALLINA: May the witness step down, your Honor, to get that document?

THE COURT: Do you have it, Mr. DePetris?

MR. DE PETRIS: I am not sure whether this is it.

THE COURT: Give it to him and see if that is it.

MR. DE PETRIS: This is a copy that I had in my file.

THE WITNESS: Of course, my copy would have a Xerox of the picture. This is an actually affixed photograph, which mine did not have.

THE COURT: Are those the papers he is talking about?

THE WITNESS: They are, your Honor. There is not affixed to this diplomatic note of the embassy. I don't believe I have a copy of that.

THE COURT: You don't have that either?

THE WITNESS: No sir.

THE COURT: So that is basically what he is asking for.

MR. GALLINA: I would like a copy of the whole --

THE COURT: He does not have a copy of the other thing, he is saying, but this is what he has.

He just said he didn't have a copy of that.

THE WITNESS: I transmitted, Mr. Gallina, the package of extradition documents, which comprised most of what I have in my hand, to the embassy.

The embassy thereupon affixed a note verbale,

which it then brought to the Ministry of Foreign Affairs.

MR. GALLLINA: May we have that marked for identification?

THE COURT: Mark it for identification.

MR. DE PETRIS: As I say, your Honor, I am not sure that these are the extradition papers. I don't know whether everything is included.

This is just the set of documents I have in my file.

THE COURT: It seems to be substantially what was requested.

THE WITNESS: Now, in addition, your Honor, I carried with me a verbatim translation --

THE COURT: Into French?

THE WITNESS: Into French, yes, sir.

THE COURT: This is the English version?

THE WITNESS: Yes, it is.

BY MR. GALLINA:

Q Am I to understand that the documents that you brought with you when you presented them to the Senegalese government were in French?

A Sir, they were in English and in French.

Q And they had a certified French translation?

A Yes sir.

THE CLERK: Extradition papers of Dominique Orsine marked Government's Exhibit No. 5 for identification.

(So marked.)

MR. DE PETRIS: Your Honor, after the proceeding today I will compare what has been marked as Government's Exhibit 5 and see if that is everything that was included in the extradition papers, and when we return tomorrow I will, if there are any additions that have to be added to it, provide those.

THE COURT: All right.

MR. DE PETRIS: I am inquiring as to whether this one document was attached as part of the extradition papers.

THE WITNESS: No sir. Only the Bandaras grand jury minutes, to my recollection.

MR. DE PETRIS: I didn't think the other item had been.

MR. GALLINA: May I have a moment to look at these, your Honor?

THE COURT: We are not going to go into those at this point.

You ask this witness your next question. You

are not to go into that at this point. I don't see any reason to.

MR. GALLINA: I can't very well ask a question --

THE COURT: You are going to ask as to the authenticity? I am not interested in that.

MR. GALLINA: I want to make sure that I know what I am --

THE COURT: It doesn't make any difference. He got these papers and they were for extradition and expulsion, and he acted on them.

Now you have the papers.

BY MR. GALLINA:

Q Those papers, the only documents that might be missing from those documents that are before us now are the covering letter from the local embassy, is that correct?

A The note verbale, yes, sir.

Q The note which is what?

A Verbale.

Q What does that mean?

THE COURT: It is a covering letter form the charge d'affaires that he put on and took to the Ministry of Justice.

Q The covering letter, is that correct?

A Yes. The diplomatic communication.

Q When was it that you gave that to Mr. Davis?

A This file here?

Q That's correct.

A I gave it to Mr. McKee, the political officer, who met us at the airport, and he in turn took it to the embassy after he had left us at the hotel to take a bath so we would be presentable to meet with the Senegalese authorities.

Q And you arrived at what time on the 22nd?

A My recollection is that the plane arrived around 1:30 or 2:00 o'clock, in that time frame.

Q What time would you say that those documents were presented to the Senegalese government?

A Oh, they were presented to the Senegalese government, first to the Foreign Ministry, if you consider that the initial presentation, at approximately 4:20.

Q In the afternoon?

A In the afternoon, yes, sir.

Q On the 22nd of August?

A That's correct.

Q At what time was it -- that is in the Ministry -- Foreign Ministry, is that correct?

A Correct, sir.

Q When was it that you had your first conference

or communication with anybody from the Ministry of Justice?

A At approximately --

THE COURT: He is reading off the paper, Mr. Gallina.

MR. GALLINA: That is satisfactory.

THE COURT: I want it on the record. Go right ahead and read.

THE WITNESS: At approximately 5:15.

Q At approximately 5:15?

A That is correct.

Q Who was that communication with?

A That was with the Technical Counselor of the Ministry of Justice, Mr. Mbacke Moctar.

Q Were there present at that time any district attorneys?

A Not to my knowledge. There were people who came in and out of the office, but there was no one -- I assumed them to be Ministry of Justice officials.

There was no one introduced to me as any district attorney or introduced to me as anyone like that.

THE COURT: As a prosecutor.

THE WITNESS: As a prosecutor, that is correct, your Honor.

THE COURT: You are back on the Court

proceedings, Mr. Gallina, so why even bother with it. Ask him the next question that you have. We have been all through that court proceeding, Mr. Gallina.

MR. GALLINA: I am not going to ask him about the court proceedings, your Honor. I need this as a reference.

THE COURT: You are reading it. Why take the time when you can ask this man a question.

Mr. Gallina, do you have another question for the witness?

MR. GALLINA: Yes, I do, your Honor.

THE COURT: Please ask it. Frankly, I think you have exhausted the situation, but if you have something, ask it.

MR. GALLINA: I do, your Honor.

(continued next page)

Q Do you know, did anybody tell you at what time these documents were presented to any court officials?

THE COURT: I don't think that is important. Don't bother answering that.

Ask him your next question.

They got there on the 22nd. They were presented on the 22nd.

You have gotten him to tell you that he saw that they were presented officially on that date. I don't know what further you have to go into on that.

Q The airplane that you say you boarded, wasn't that airplane at the end of a runway?

A No, sir, it was at the terminal.

Q It was at the terminal?

A Well, you know, it was not at the end of the runway.

Q When the defendant was brought to the airplane, wasn't the airplane actually -- weren't the engines of the airplane engaged and on?

A Not to my observation, no, sir.

Q How long would you say you had to wait for the doctor to arrive?

A On the order of ten, fifteen minutes.

Q Are you telling us that there was nobody else on that plane at the time the defendant was brought onto the plane who was already present on the plane who injected the defendant?

A Categorically, no.

Q How many times was he injected, once or twice?

A Once.

Q You are positive of that, also?

A Absolutely positive.

Q Did you observe anybody to be holding a handkerchief to the mouth of the defendant?

A No, I did not.

Q Do you know the French Consul in Senegal? Did you ever have an opportunity to meet the French Consul?

A The French Consul?

Q Or the French Ambassador to Senegal?

A No, sir.

Q Did you observe at the airport any representative, or did it come to your knowledge that there was any representative of the French Embassy at the airport who attempted to communicate with Mr. Orsine?

A Mr. Davis, the Charge d'Affaires, indicated to me that he had observed the acting French Consul at the airport. I did not meet him.

Q And did not the acting French Consul demand to see Mr. Orsine, being that Mr. Orsine was a French citizen?

A Not to my knowledge, sir, nor in my presence of anyone that I observed.

Q You didn't observe it, but it has come to your knowledge that he did make such a demand, didn't he?

A No, it hasn't. He was there. I would assume he would. But it had not come to my knowledge.

Q Five o'clock in the morning he wasn't there to see the sun come up at the airport, was he?

THE COURT: That is what he might have seen, Mr. Gallina, if he wanted a little longer.

MR. GALLINA: There is no question about that.

THE COURT: This man has told you what he knows of his knowledge. You are trying to say he must know something else.

Ask if he knows anything else.

Q Do you know anything else of what the French Consul communicated to any member of the American staff there or any American who was there?

A No, sir.

Q You never inquired, of course?

A Have I --

MR. DE PETRIS: Objection.

THE COURT: Objection sustained.

There was no obligation to inquire.

Q Did you come to any knowledge that the defendant's wife was present at the airport?

A She was identified to me, yes, sir.

Q Did you speak to her?

A No, sir.

Q And did you hear her make any statement?

A No, sir.

Q Did you hear the defendant make any statements in the direction of the French Consul or in the direction of his wife?

A No, sir.

Q You did not hear those?

A I don't think it was possible.

Q Why is that?

A Because when I first saw him he was emerging from a police van. The family representatives were in the terminal. As I say, I could not even distinguish individuals standing in the terminal from where the plane was parked at the ramp.

Q Did you come to know whether or not the defendant's brother was at the terminal?

A He was so identified to me.

Q And do you know who communicated with any of these parties to have them at the terminal at the same time you people were boarding Mr. Orsine onto the plane?

A No, I do not.

Q Did you speak to the defendant's brother, Mr. Orsine?

A No, sir, I did not.

Q Was any demand at that time made to you, or anybody to your knowledge, that Mr. Orsine be allowed to speak to either the French Consul, his wife, his brother or his attorney, Mr. Wadde?

A No, sir.

Q Is it a fact that Mr. Wadde, his attorney, was also present at the airport?

A There was a person, in addition to the acting French Consul, Mrs. Orsine and a brother, I believe, his name is Pierre, and there was another gentleman. Again, I was not introduced to him nor did I have any communication with him. My recollection is that he was identified as the lawyer. But I don't believe I ever at that time knew his name.

Q Did the lawyer or any of these other parties speak to any of the individuals who were a member of your party, or any American official engaged in this affair at that moment?

A Charge Davis, as I recollect, spoke to the French Acting Consul. I don't know that Charge Davis had any contact with the other members of the party. He may very well, but not in my observation.

Q Did they have -- did any of these persons present any written documents to yourself or to Mr. Davis or to anybody, to your knowledge?

A Not to me, sir, and not to my knowledge to Mr. Davis. I'm sure he would have brought that to my attention.

Q The defendant, was he cleared through Customs or any other type of Immigration facility that the Senegalese operate at the airport, to your knowledge?

A No, sir.

Q The airplane, what type of airplane was it?

A 707, as I recall.

Q What airline was that?

A Pan American.

Q Do you know the name of the Captain of that airline?

A No, I don't, sir.

Q Is that present in any record or document?

A I assume that it would be easily obtainable from Pan Am, but it was their flight No. 189, which originated in

Nairobi. It transited in Lagos, Monrovia, Dakar, and then flew from Dakar non-stop across the Atlantic to John F. Kennedy Airport.

I am sure that Pan Am would have the record of his name. I can describe him. He was tall, thin --

THE COURT: He could probably get the record.

MR. GALLINA: I will attempt to do that, your Honor, unless you can aid me and give me the name.

THE WITNESS: I would be delighted to. I don't have his name, no, sir, I'm sorry.

Q The assistant or representative of Pan American, you state you spoke to before you spoke to the Captain, was that a plane crew member?

A No, sir. He is the, what you call the station agent.

Q What was his name?

A I'm sorry, I don't have his name.

Q Was he present during these affairs as they were taking place outside the airplane and on the airplane?

A He was out there because he was the person who came back to get me to go speak to the captain.

Now, his precise position during all of the events that took place at plane side I really can't account for where he was. I assume he was in the general area.

Q At any time, did you or members of the State Department or any DEA agents that you knew were there at the airport take charge of the activities at the airport insofar as directing the Senegalese police as to what to do?

A No, sir.

Q Nobody issued them any orders, to your knowledge?

A Mr. Boechichio was identified to Director Ndiaye as the person empowered by the Secretary of State to take custody of Mr. Orsine, and we then proceeded to the rear of the van. They opened the door and Mr. Orsine came out in a manner which I previously described to the Court, and then I think it would have -- it would be very difficult under the ensuing facts to find out who was in charge of anything, sir.

Q Yes, I understand that.

Was any ticket purchased for Mr. Orsine at that time?

A They had a ticket, yes, sir. It had been purchased, to my recollection, on Saturday.

Q Were any passengers taken off the airplane in order to make room for Mr. Orsine and the agents?

MR. DE PETRIS: Objection.

THE COURT: Sustained.

Don't answer the question.

Q This ticket was for that flight; is that correct?

A Yes, sir, it was a first class ticket.

Q And there were tickets also purchased for the agents, I presume?

A Agent Collier, as I recall, had already purchased his ticket. Mr. Boechichio and I had tourist class tickets which were exchanged for first class tickets.

Q There were available seats on the plane?

A No, sir. I was advised by the station agent that the flight had been over-booked. We did not return first class.

Q I realize that. As you testified previously, but in no way or in no sense can you say that the plane was commandeered in any way by the United States Government?

A Absolutely not. It was totally full. It wasn't an empty seat on the aircraft.

Q When you arrived on the --

MR. DE PETRIS: I object to this. I don't know where Mr. Gallina is going, but it does not appear to have any relevance.

THE COURT: Sustained.

MR. GALLINA: I am trying to show --

THE COURT: Sustained.

Q Isn't it a fact that the Government in Senegal, our government, either through your control or whoever was

controlling the situation there exercised such power as to remove passengers off this airplane?

MR. DE PETRIS: Objection.

THE COURT: Sustained.

Don't answer it.

MR. GALLINA: I don't have any further questions at this time, your Honor.

THE COURT: Any redirect?

MR. DE PETRIS: Just one question, your Honor.

REDIRECT EXAMINATION

BY MR. DE PETRIS:

Q The individuals that were in the van and in the small vehicle that accompanied the van during the early morning hours of August 25, 1975, how were the individuals in the van dressed, referring to the individuals other than Mr. Orsine? By that I mean were they in uniform --

A Mr. DePetris, my recollection is that they had these sort of jungle suits. It's a loose-fitting jacket --

Q Camouflaged --

A There were some camouflaged uniformed type individuals, but I can't recall whether they were inside the van or in the front or in the car preceding, or whether they just converged.

I really do not have a good firm recollection.

It was so startling when they opened the thing to see this man springing forward. My recollection is that there were one or two Senegalese police officers clinging to his back. There were a group of them clustered around --

THE COURT: Mr. Fields, as far as you know, were there any Americans or American agents in that van?

THE WITNESS: No, sir.

MR. DE PETRIS: I have nothing further.

THE COURT: Mr. Gallina, you may have some recross, if you wish.

MR. GALLINA: Yes.

RECROSS-EXAMINATION

BY MR. GALLINA:

Q You say that this occurred at what time in the morning, approximately, that Mr. Orsine was brought to the airport?

A Sometime after 5:00 o'clock, sir.

THE COURT: 5:00 A.M.

Q The allegations, if I may digress for just one moment, the allegations in the original request for provisional arrest --

THE COURT: We are not going into the authenticity of that document, not for purposes of this hearing.

MR. GALLINA: I am not even going into that.

THE COURT: That's all right. Why did you take it up?

Q The allegations of the provisional arrest, were they not an allegation that Mr. Orsine had committed some sort of crime relating to jewelry?

A Sir, the allegations for the provisional arrest is that this man is a fugitive under indictment for the United States District Court for the Eastern District of New York.

That indictment charged him for commission of violations of the United States narcotics laws. I can give you the specific citations --

THE COURT: Is that what the papers set forth?

THE WITNESS: Yes.

THE COURT: That you had for his extradition or expulsion?

THE WITNESS: Yes, sir.

Q That original request for provisional arrest, that was not done by these documents, was it? This is the extradition request, this document here --

A This is the documentation which supports the request.

Q This is Exhibit 5, so we are clear, Government's Exhibit 5?

A Yes, sir.

Q This is the exhibit that supported the provisional arrest or the extradition request?

A This would support the extradition request.

Q The request for a provisional arrest was made by Telex, was it not?

A Yes, it was.

Q And you are the one who caused that Telex to be sent; is that correct?

A I sent a State Department Cable to the embassy because I could not get personally through to the Charge d'Affaires by telephone.

I was subsequently advised, and I am trying to recollect now, that somewhere in my memory that Director Ndiaye indicated that there had been a communication through the Interpol channel for the arrest.

Whether they responded to that request or our request --

THE COURT: But you had nothing to do with it?

THE WITNESS: No, sir.

THE COURT: Next question, Mr. Gallina.

BY MR. GALLINA:

Q In other words, you didn't instigate the Interpol communication?

THE COURT: He is not part of Interpol. Let's not be ridiculous now.

MR. GALLINA: I'm not, your Honor.

THE COURT: That is what you are doing.

Q The request for the provisional arrest did not contain, as you recall it, any allegations of anything having to do with the thievery or the taking of any jewelry, is that correct?

A Sir, I never saw the request for provisional arrest.

Q You are the one that caused the cable to be transmitted, did you not?

THE COURT: What did your cable say?

THE WITNESS: My cable said that this man was a fugitive from -- this man was a fugitive from U. S. Justice under indictment from the United States District Court for the Eastern District of New York for offenses -- for violation of the United States narcotics law. I believe it was --

THE COURT: And that is what he has been telling you right along, Mr. Gallina.

Next question.

MR. GALLINA: I have no other questions at this time.

THE COURT: You are finished with this witness?

MR. GALLINA: Yes.

I would ask that the witness be made available.

THE COURT: For what purpose? You ask the next question. Ask him right now.

Just to keep him around for some whim that you have in mind -- you ask him right now, counselor.

MR. GALLINA: I don't want him to be kept here --

MR. CUTLER: It is only a half-hour ride from Washington, and if you believe that we need him --

THE COURT: That sounds more reasonable.

MR. GALLINA: That's exactly what I want. I don't know if he has any need --

THE COURT: You want to keep him here for some whim or for some flighty reason you might have? I won't permit it.

MR. GALLINA: If he is going to be in this country or is going to leave this country, I am sure his duties take him out of the country and he may not be available, but if occasion arises --

THE COURT: If you have something to ask him, I wish you would ask him now.

MR. GALLINA: I have no further questions at

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this time.

THE COURT: You are through with him?

MR. GALLINA: I am through.

THE COURT: You are excused.

(Witness excused.)

THE COURT: We will resume at 11:00 A.M. tomorrow morning.

(Whereupon, the hearing was adjourned to November 21, 1975 at 11:00 A.M.)

* * *

I N D E X

WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
Louis G. Fields, Jr.	27	65	116	

E X H I B I T S

GOVERNMENT'S NO.	DESCRIPTION	IDEN.	EVID.
1	Notes of Mr. Fields	34	
2	3-page Document of Mr. Green	49	
3	Medical certificate (French)		65
4	Medical certificate (English)		65
5	Extradition papers	102	

OFFICIAL COURT REPORTER

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U.S. DISTRICT COURT E.D. N.Y.
NOV 24 1975
TIME A.M.
P.M.

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

----------X

UNITED STATES OF AMERICA, :

-against- : 74-CR-492

DOMINIQUE ORSINE, :

Defendant. :

----------X

United States Courthouse
Brooklyn, New York

November 21, 1975
11:00 o'clock A.M.

B e f o r e :

HONORABLE HENRY BRAMWELL, U.S.D.J.

I hereby certify that no Stenotype notes were taken and a typewritten transcript contains recorded on this [illegible] accurate notes of the proceedings contained therein.

Michael J. Miele

Official Court Reporter
U.S. District Court

MICHAEL MIELE
OFFICIAL COURT REPORTER

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Appearances:

DAVID G. TRAGER, ESQ.
United States Attorney
for the Eastern District of New York

BY: DAVID DE PETRIS, ESQ.
Assistant U.S. Attorney

MURRAY CUTLER, ESQ.
Attorney for Defendant

BY: GINO GALLINA, ESQ.
Of Counsel

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MR. GALLINA: I apologize to your Honor for the delay.

THE COURT: That is all right.

MR. De PETRIS: Shall we proceed, your Honor?

THE COURT: Yes.

First swear the interpreter.

(The Interpreter Dr. George G. Greco, was duly sworn by the Clerk of the Court.)

MR. GALLINA: Before we proceed with the witnesses, may I make a short application to your Honor?

THE COURT: Surely.

MR. GALLINA: As your Honor knows, every day we are assaulted in the newspapers by all sorts of matters, some of which are true and some of which are not; but I think we are all aware of facts of misconduct in all levels, both in Government and out of the Government and private citizens, et cetera.

Last night as I was driving home I was particularly disturbed, not by the accusation, about attempted assassinations of other persons in other countries, but more because of the fact that I heard the head of the FBI try to promote his own sexual standards on a college by having the FBI --

THE COURT: What year was this?

MR. GALLINA: A number of years ago, and forged letters to school officials and when I thought of that I thought of the testimony that I heard here yesterday which to me, and I am sure it did not strike your Honor that way, but to me as an advocate and having the opportunity to speak to my client and knowing a little more about the case, it was patently ludicrous that we have here an expert in foreign affairs and a lawyer who specifically went to Senegal together with documents, and he had about 20 days to do so, and he started on the 30th of July and he attempted to extradict my client from that country and then testified that he never knew whether or not the Court handled the extradition and what the decision was.

I listened to all these matters and I was really quite disturbed about it as I reflected on it last night and I thought --

THE COURT: Well, you are assuming that his requirement is to go into what the Senegalese Court did at that time? I don't know that it is.

MR. GALLINA: As he stated his specific purpose was to handle special projects and his specific project at that time was to assist our Drug Enforcement Administration in extradicting --

MR. De PETRIS: Oh, no, your Honor.

MR. GALLINA: May I continue and finish?

THE COURT: Would that have changed his position or your client's position as to this situation?

(Continued on next page.)

MMsf
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MR. GALLINA: Yes, in this fashion in two ways. One, your Honor, I think under the concept that your Honor was laboring yesterday, restricted me on cross-examination to quite a degree and secondly when I made application to your Honor that certain telegrams, communications, letters, all which he may have replied upon or which he may have corroborated or not --

THE COURT: I don't want to extend this hearing beyond the scope that it should be just because there are other matters that you wish to bring about. In fact, your whole approach is to bring in other issues which are not completely pertinent to what is before the Court, and this is either for the purpose of delay or either to get the Court on some other issue which the Court doesn't have before it and you know it doesn't have before it. I might tell you this: As far as the issue of bribery, that is not before the Court at this time. If you wish to bring it in, you can bring it in as a separate factor and present it to the United States Attorney. You can do anything you wish with it. But that's not the issue I want and that's the approach I am taking and it is not an approach where every time we see something we are going to go ten

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miles out of the way to try to correct it. I am not taking that approach.

MR. GALLINA: I will abide by your ruling, your Honor.

THE COURT: I am going to accept everything the way it was yesterday and I know you are disturbed and, in fact, you look so disturbed, I feel bad for you today.

MR. GALLINA: You know, I am not disturbed, your Honor.

THE COURT: I feel so bad for you today because you are disturbed because 50 years ago there was something in the papers where they were looking into the sexes of some area and it disturbs you.

MR. GALLINA: I was thinking of these matters. Here is my application: I want to inquire both now of the witnesses the Government has, and I will attempt to learn of certain information through subpoenas I intend to verify and show them to the Government to avoid unnecessary expenses on the Government's part, I intend to inquire on what I believe the -- United States has illegal electronic surveillance in Argentina. In order --

THE COURT: Counsellor, I am not interested in what happened in Argentina. I thought I was doing

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you a favor by permitting you to go into what happened in Africa. I thought I was doing you a favor. Evidently I didn't. I am not interested in the electronic surveillance in Argentina which has nothing to do with this issue.

MR. GALLINA: If the determination by our Government that Mr. Orsine would be on a plane in Senegal on a certain date --

THE COURT: I am not interested in how they came about that particular knowledge. It is not part of this hearing.

MR. GALLINA: I will not be permitted to inquire into that?

THE COURT: No, sir.

MR. GALLINA: I wanted to obtain copies of certain communications. I asked about them.

THE COURT: Which came out of the electronic surveillance in Argentina?

MR. GALLINA: No, the communications between the State Department and DEA and our embassy or the Senegaleseofficials showing that our Government falsely stated to the Senegalese Government in its request for a provisional arrest that a crime had been committed in America. They knew it was necessary for them to state that in order to come within

the scope of the Senegalese extradition compact.

THE COURT: You mean this man was wanted for violation of narcotic laws in the United States?

MR. GALLINA: No, that he committed a crime in the United States. Specifically under the compact between the United States and Senegal it does not provide for extradition, if the requesting state alleges facts which did not take place.

THE COURT: I am not going into collateral areas. You are here for one purpose and I will require you to try this particular hearing about that one purpose.

MR. CUTLER: If I may just get to this point that counsel and I have discussed. The issue he has raised and I know you will be interested in it, is that under the law of Senegal, a person cannot be extradited if he didn't commit a crime in the state that is requesting his extradition. He had to be present in that state. In other words, if a person has committed a crime in Argentina where there is a collateral connection of a conspiracy into the United States, that might be a crime in the United States. As far as Senegalese law --

THE COURT: What is your answer, Mr. DePetris?

MR. DE PETRIS: Mr. Gallina seems to be under

the impression that an expulsion by the Government of Senegal would be an illegal act. That is not an illegal act. The request was for extradition or expulsion. So whether it was either is of no consequence here.

THE COURT: And that is not what this hearing is about. I am not going into that area.

MR. GALLINA: I intend to show by cross-examination and direct evidence that the defendant was neither extradited nor expelled by Senegal but that all the acts of the Senegalese themselves were as agents of the United States Government.

THE COURT: If that is a dfinitive position without any violence or assault, I can conclude this hearing.

MR. GALLINA: There was plenty of violence.

THE COURT: If that is a definitive position, I can conclude this hearing without violence or assault.

MR. GALLINA: I am not taking that position.

THE COURT: What you are giving me is just argument which is good but I think we can get ahead with this hearing and I think we should.

MR. GALLINA: Thank you, your Honor.

R H Y H T R Y A L , called as a witness, having been first duly sworn by the Clerk of the Court, testified as follows:

DIRECT EXAMINATION

BY MR. DE PETRIS:

MR. DE PETRIS: Your Honor, before we proceed with this witness. This witness prepared a report concerning the activities of Mr. Orsine on his trip from Argentina to Senegal. I am not convinced that this material is discoverable in this type of hearing. However, I have no objection to turning portions of it over but I would ask to have certain parts of the report blocked out. I have no objection to the Court seeing the entire document in camera and I will indicate the particular portions of the document --

THE COURT: This is a hearing and under the circumstances it is not required the same as a trial that the 3500 material be given to the defendant. If there is any portion of it you wish to give to him, you may do that.

MR. DE PETRIS: Thank you.

THE COURT: Just such portions as you may wish to give to him.

MR. DE PETRIS: Thank you.

BY MR. DE PETRIS:

Q State your name for the record, please.

A Rhyn Tryal.

Q By whom are you employed?

A United States Drug Enforcement Administration.

Q How how long have you been so employed?

A Approximately seven years.

Q Are you assigned to a particular area of the world at this time?

A Yes.

Q Where is that?

A Buenos Aires, Argentina.

Q In what capacity do you serve there?

A I am the special agent in charge.

Q Did you have such a capacity andwere you so employed in August of 1975?

A Yes, sir.

Q And also in July of 1975?

A Yes.

Q I direct your attention to approximately July, towards the end of July of 1975. Did you send, did you communicate with the Drug Enforcement Administration in Whashington and in New York and advise them that you anticipated that Dominique Orsino, the defendant, would be traveling from

Argentina to France with the plane having a stopover at Dakar, Senegal?

A Yes, sir, I did.

Q Directing your attention to August 6, 1975, did you have occasion to be at the airport in Dakar, Senegal?

A No, sir.

Q On August 7th?

A Yes, sir.

Q On that particular occasion, did you board a plane which was ultimately bound for France but with a stop-over at Dakar, Senegal?

A That's correct.

Q When you boarded the plane did you observe Dominique Orsine to be boarding the plane also?

A That's correct.

Q And did that plane subsequently leave Buenos Aires?

A Yes, sir.

Q Were there any stops that the plane made private to arriving at Dakar, Senegal?

A No, sir.

Q Had a communication been made to the DEA headquarters in New York that -- had you or another agent in the office in Buenos Aires, Argentina communicated with the

DEA in New York or Washington to advise them that Mr. Orsino was on a plane bound for Dakar, Senegal?

A That's correct.

Q Did you send a communication or did another agent?

A Another agent.

Q Now, when did you arrive in Dakar, Senegal?

A On October 7th.

Q Was it daylight or night?

A It was daylight in the early morning hours.

Q What happened when the plane landed at Dakar, Senegal?

A I deplaned through the first class stairway and observed Mr. Orsino approximately ten to 15 feet in front of me walking towards the terminal building.

Q Did Mrs. Orsino leave the aircraft when Mr. Orsino did?

A I did not see her, sir.

Q What happened -- did you proceed to the terminal?

A Yes.

Q What happened when you reached the terminal?

A Upon entering the terminal I heard my name being called on the paging system advising to come to the

information counter. I went to the information counter where I met Mr. Allan Davis --

Q Is he the charge d'affaires for the American Embassy in Dakar?

A He was at that time. At the information counter I met with Mr. Davis who inquired which one of the passengers was Mr. Orsino. I pointed Mr. Orsino out to Mr. Davis at that time.

Q What happened after you pointedout Mr. Orsino to Mr. Davis?

A I observed Mr. Davis speak to members that I subsequently found out were officials of the Senegalese Government and law enforcement agencies, he was speaking in French which I don't understand. The exact content of the conversation I can't tell you. Subsequently I observed members of the Senegalese law enforcement agencies detain Mr. Orsino.

Q This was in the airport terminal?

A That's correct.

Q After this took place, did you see Mr. Orsino again while you were in Dakar, Senegal?

A No, sir.

Q How long did you remain in Dakar, Senegal?

A Approximately one week.

Q Was this in case the extradition or expulsion by the Government of Senegal could be handled immediately?

A That's correct.

Q After a few days did you leave Dakar, Senegal?

A That's correct.

Q During the time you were in Dakar, the only time you saw Mr. Orsine was the moment he left the plane and the moment he was arrested by the Senegalese Government?

A That's correct.

Q At the airport in Dakar, when Mr. Orsine was arrested, did you see anyone strike Mr. Orsine?

A No, sir.

Q During the period of time that you were in Senegal, which was for how long?

A Approximately one week.

Q Did you have any communication with any representative of the Senegalese Government?

A No, sir.

Q Is there any Drug Enforcement Administration agent assigned to Dakar, Senegal?

A Not to my knowledge.

Q During the time you were in Dakar, Senegal, did you see any other agent of the DEA?

A No, sir.

Q To your knowledge were there any other DEA agents in Dakar, Senegal while you were there?

A To my knowledge, no, sir.

Q And you said you had no contact with any representative of the Government of Senegal during the time you were there?

A Other than to say goodbye which was the day I left.

Q At the airport?

A No, sir, at one of the offices in Dakar. I went along with Mr. Davis.

Q Did you make any payment to any representative of the Republic of Senegal, of any kind?

A No, sir.

MR. DE PETRIS: I have no further questions.

THE COURT: Cross-examination, Mr. Gallina?

MR. GALLINA: Thank you, your Honor.

(Continued on next page.)

MR. De PETRIS: Two more questions, your Honor?

THE COURT: Right.

DIRECT EXAMINATION

BY MR. De PETRIS (Continued):

Q When the flight arrived at Dakar, Senegal, did all of the individuals who were on board the plane exit the aircraft?

A That I don't know, sir.

Q Was there an announcement made of any kind that -- concerning whether individuals could leave the aircraft?

A Not that I heard, sir.

Q Did you ask one of the employees of the airlines on the aircraft if you could leave the aircraft?

A Yes, sir.

Q What did they tell you?

A That I could leave the aircraft, that the aircraft would be on the ground approximately 45 minutes.

MR. De PETRIS: I have nothing further.

THE COURT: Was Mr. Orsine taken from the aircraft or did he leave of his own free wheel?

THE WITNESS: He left on his own free will, sir.

THE COURT: Was anybody accompanying him as he left?

THE WITNESS: Not that I -- not that I saw, any associate. There were people walking in the same general area.

THE COURT: He just walked off the aircraft?

THE WITNESS: Yes.

THE COURT: By himself?

THE WITNESS: That's correct.

THE COURT: Yes, sir.

MR. De PETRIS: One further question.

THE COURT: One moment.

DIRECT EXAMINATION

BY MR. De PETRIS (Continued):

Q Did you see Mr. Orsine go anywhere in the airport terminal?

A Yes, sir.

Q Before he was arrested?

A Yes, sir.

MR. GALLINA: I didn't hear that.

THE COURT: Did you see Mr. Orsine go anywhere in the airport terminal before he was arrested?

THE WITNESS: Yes, sir.

Q Where did he go?

A The area of the men's room.

MR. De PETRIS: I have nothing further.

THE COURT: All right, Mr. Gallina.

MR. GALLINA: Thank you, your Honor.

THE COURT: Yes.

MR. GALLINA: Thank you for having patience with me.

THE COURT: That is all right. If you want to take a few more moments, you may.

MR. GALLINA: No. Thank you, your Honor.

CROSS-EXAMINATION

BY MR. GALLINA:

Q That is Mr. Tryal?

A That's correct, sir.

Q T-r-y-a-l; is that correct?

A Yes.

Q Thank you.

Mr. Tryal, how long had you been assigned in Buenos Aires?

A Approximately four years.

Q You've been there steadily for the last four years?

A That's correct, sir.

Q And you are still a Special Agent in charge?

A That's correct, sir.

Q So you are familiar with all the communications

between DEA, the United States and your office in Buenos Aires concerning Mr. Orsine?

A All of the communications that came in to DEA office and left DEA office.

Q Correct.

A That's correct.

Q As supervisor. There are other agents who also worked with you in Buenos Aires?

A That's correct.

Q Or are you the only agent?

Any communications that would have left from your office concerning Mr. Orsine, you would have been knowledgeable of; is that correct?

A That's correct.

Q Now, didn't you -- did you use any electronic surveillance in obtaining any information concerning Mr. Orsine?

MR. De PETRIS: Objection.

THE COURT: Sustained. Do not answer it.

Q Did you bribe any officials in any fashion in order to gain information concerning Mr. Orsine's --

MR. De PETRIS: In what country?

THE COURT: In what country?

MR. GALLINA: In Argentina.

MR. De PETRIS: Objection.

THE COURT: Objection sustained. Do not answer the question.

Q Did you at any time employ any electronic surveillance concerning Mr. Orsine?

MR. De PETRIS: Objection.

THE COURT: Sustained. Do not answer the question.

Q Did you or members of your staff at any time make any payments to Government agents or informants or that nature in Argentina or elsewhere?

MR. De PETRIS: Objection.

THE COURT: Argentina is -- it will be accepted as the question. The objection is sustained. Do not answer the question.

Q As to any of these questions that I have just asked you, is that of -- did you do any of these things or utilize any of these apparatuses?

MR. De PETRIS: Objection.

Q In other words, bribe or utilize electronic surveillance in Senegal?

MR. De PETRIS: I have no objection to Senegal.

THE COURT: Let him rephrase the question. Rephrase the questions individually.

MR. GALLINA: Yes, sir.

Q Did you or agents under your command or any agents, to your knowledge, utilize electronic surveillance in Senegal concerning Mr. Orsine?

A No, sir.

Q Did you or any agents in your command or any agents to your knowledge bribe or furnish monies in any fashion, whether you considered it a bribe or not, furnish monies in any fashion to Senegalese officials?

MR. De PETRIS: In connection with Mr. Orsine, you are referring to?

MR. GALLINA: I'm talking about in connection with this whole episode in Senegal.

MR. De PETRIS: In connection with Mr. Orsine? I'll object unless it is in connection with Mr. Orsine, your Honor.

THE COURT: I will sustain it. We will limit it to Mr. Orsine because that is the problem that is before the Court.

MR. GALLINA: When I say Mr. Orsine, I mean the whole episode concerning the extradition, the -- as the Government classifies it as a -- what do you call it?

MR. De PETRIS: Extradition or expulsion.

MR. GALLINA: Expulsion or getting information

concerning Mr. Orsine or any of the events surrounding Mr. Orsine's being taken from Senegal.

MR. De PETRIS: Your Honor, I object to that as being too broad, too vague.

THE COURT: The objection is sustained.

You can rephrase the question and limit it within reasonable bounds.

MR. GALLINA: Your Honor, I don't know whether or not it is the intention of the Government to have witnesses present that have previously testified.

THE COURT: You are talking about a witness who has already testified. As to that, there is no objection, if that is a problem.

MR. GALLINA: I'm just -- there is just a possibility I may recall the witness.

THE COURT: Well, he has already testified. If you are going to recall him, you are recalling him as your witness.

MR. GALLINA: Yes.

THE COURT: That is not a problem. In fact, this is only a hearing and we are not trying to impress a jury at this point.

MR. GALLINA: I realize that.

THE COURT: Do you understand?

MR. GALLINA: I'd rather not have my witness in the courtroom.

THE COURT: Your witness is not to be in the courtroom.

MR. GALLINA: Well, if he's going to be my witness, he's in the courtroom.

THE COURT: He is here having testified and he may stay here, if he wishes.

MR. GALLINA: I don't recall, your Honor, if your Honor sustained that last.

THE COURT: All you have to do is ask a question which is not too complicated and not too complex and the witness will answer it for you.

BY MR. GALLINA:

Q To your knowledge, did you or any officials under your command, any agents under your command or any other agents, to your knowledge, furnish monies to any Senegalese officials concerning Mr. Orsine?

A No, sir.

Q That's to your knowledge; is that correct?

A That's correct.

Q I would ask you the same questions concerning French officials.

MR. De PETRIS: In Senegal?

MR. GALLINA: No. French officials, whether in Senegal --

THE COURT: No. Mr. Gallina, now please bear with the Court.

MR. GALLINA: Yes. I'll ask the questions.

THE COURT: We do not work as fast as you do, you see. Please ask the questions. Make them specific, and if it is a country, make the country specific, too. You have to bear with us.

MR. GALLINA: Yes, your Honor.

THE COURT: You understand.

BY MR. GALLINA:

Q Did you or any officers under your control or any officers, to your knowledge, of the Government of the United States furnish any funds in any fashion to any officials of France, whether --

THE COURT: You still have to put the second country in there. As the United States Attorney got up, he was going to object, but I might as well tell you.

Q In France?

THE COURT: In France?

MR. GALLINA: That's correct.

MR. De PETRIS: Concerning Mr. Orsine?

MR. GALLINA: That's correct, concerning Mr. Orsine.

MR. De PETRIS: And concerning --

MR. GALLINA: Concerning his extradition.

THE COURT: In France concerning Mr. Orsine?

MR. GALLINA: Yes, extradition or expulsion from Senegal concerning -- concerning his extradition or expulsion from Senegal.

MR. De PETRIS: I have no objection to that, your Honor.

THE COURT: He may answer.

A (Continuing) No, sir.

Q Now, did you ever utilize any electronic surveillance concerning Mr. Orsine, concerning his expulsion or extradition or the events surrounding it in Senegal in France?

A Not to my knowledge.

Q You didn't and not to your knowledge.

A That's correct.

Q I am not certain whether I asked this question, but just to positively eliminate it: To your knowledge, did you utilize any -- did you or anybody under your command or anybody else who was an official of the United States Government or who was an agent of the United States Government -- in other words, hired by or asked to do a favor for the United States

Government -- utilize electronic surveillance in Senegal concerning Mr. Orsine?

A Not to my knowledge.

Q Insofar as electronic surveillance is concerned in Argentina, was any -- at the direction or at the request of United States officials, did any party act in behalf of the United States in electronically surveilling Mr. Orsine in Argentina in order to gain information concerning Mr. Orsine's leaving Argentina for France?

A No, sir.

MR. GALLINA: You didn't object to that?

MR. De PETRIS: No, I didn't object.

Q Now, the communication that you state you sent or you received between the United States and your office in Argentina, what -- in what form were they? telegrams, letters, dispatches, courier carried dispatches? In what way?

MR. De PETRIS: Your Honor, I object to this as -- on the grounds of relevancy.

THE COURT: Sustained. Do not answer the question.

MR. De PETRIS: We are talking about extradition or expulsion.

Q When was it that you caused these communications

to issue between the United States and your office in Buenos Aires concerning Mr. Orsine?

A Well, in regard to Mr. Orsine's intended travel plans, if I recall correctly, the first communication would be approximately the 25th, 26th of July. In that area.

Q Do you have a copy of that with you today?

A No, sir.

Q Howmany communications were there, approximately, if you recall?

A That my office received in regard again to the travel plans of Mr. Orsine? I would estimate four,five.

Q Now, these are communications you received from persons in Argentina; is that correct?

A I'm sorry, sir?

Q These are communications you received from persons or parties or officials in Argentina; is that correct?

A No, sir. I am referring to our cable traffic.

Q I see. That's four or five cables that you sent out?

A That were sent --

Q Or your office caused to be sent out?

A I would put approximately the number at four or five, the number of cables that my office sent out as well as received.

Q All right. Are those cables sent -- when you say "cables," you mean telegrams; is that correct, as we commonly call them, telegrams?

A That's correct.

Q And they were reduced to writing; were they not?

A Yes, sir.

Q And they are presently still in existence; are they not?

A I assume so, yes.

Q Do you have any of them here now?

A No, sir.

Q Did you make any notes or memorandums concerning your testimony here today, prior to coming here?

A Well, following the arrest of Mr. Orsine in Dakar and my return to Buenos, I wrote a report of investigation concerning the incident.

MR. GALLINA: May I see that report, your Honor, at this time?

THE COURT: I will ask Mr. De Petris. What we can do is we can adjourn for lunch. Mr. De Petris can go over it and give him what he feels -- what he wants to give him out of that report and that is what Mr. Gallina will have after lunch to continue the

cross-examination.

MR. GALLINA: Thank you.

MR. CUTLER: Maybe he can mask what he doesn't want and photostat it for us?

THE COURT: He has to unmask it.

MR. CUTLER: Oh.

THE COURT: 2 o'clock, gentlemen.

(Luncheon recess taken.)

MMsf 1pm

AFTERNOON SESSION

MR. DE PETRIS: Your Honor, I have a portion, do I have this marked, it's two paragraphs, prepared by this agent which I will turn over to defense counsel.

THE COURT: Is that what you are turning over?

MR. DE PETRIS: Yes, the rest of it is not relevant to what occurred in Argentina, the remainder of the report does not concern what occurred in Senegal.

MR. GALLINA: Could we have the balance of the document put in an envelope and sealed for the Court, just in case there is a question?

THE COURT: We can do that.

MR. DE PETRIS: I have no objection. I will have to unseal it at some point and make a copy so I have a copy of it. This is my only copy.

THE COURT: You can do that at any time.

MR. DE PETRIS: It is a four page report containing 20 paragraphs and defense counsel have received the entire part of Paragraph 16 and all except for about three words in 17.

THE COURT: All right.

THE CLERK: Two paragraphs, 16 and 17, marked Government's Exhibit 6 for identification.

RHYN TRYAL, called as a witness, having been previously sworn, resumed the stand and testified further as follows:

CROSS-EXAMINATION

BY MR. GALLINA: (Cont'd.)

THE COURT: You may proceed, Mr. Gallina.

MR. GALLINA: Thank you very much, your Honor.

THE CLERK: Four page document marked Government's Exhibit No. 6-A, sealed on orders of the Court.

THE COURT: So ordered.

Q Mr. Tryal, did you buy a ticket for the Air France plane that you were on that you took from Buenos Aires to Dakar?

A Yes.

Q Did you purchase it yourself?

A No, sir.

Q By whom was it purchased, do you recall?

A By one of the agents in my office.

Q When was that purchased?

A If I recall correctly it was purchased the day of August 6, 1975.

Q The same day?

A If I recall correctly, yes.

Q Or the day before you left? Actually speaking did you leave on the 6th or did you leave on the 7th?

A As I recall the Air France flight 96 left on the 6th arriving in the morning of the 7th.

Q You are going against the time zones. Is that correct?

A Yes.

Q You said when you arrived in Dakar, you arrived in the daytime. It was light?

A Yes, sir.

Q Wasn't it about 4:00 o'clock in the morning?

A In which time zone?

Q In Dakar.

A No, sir. As I recall the time was approximately 7:00 a.m.

Q And you said that Mr. Davis identified Mr. Orsine to the Senegalese authorities. Is that correct?

A No.

Q Isn't that what you testified to before?

A No, what I stated was following my identification of Mr. Orsine to Mr. Davis, Mr. Davis went into an investigation with the Senegalese agents and law enforcement agents in French, the contents of which I didn't know.

Q Who identified Mr. Orsine to the Senegalese authorities?

A I would assume Mr. Davis.

Q Did you prepare the report of which Government's Exhibit 6 --

MR. GALLINA: Can we have that report, Government's Exhibit 6?

MR. DE PETRIS: Yes.

Q I will show you Government's Exhibit 6 for identification. Did you prepare the report on which Government's Exhibit 6 was taken?

A That's correct.

Q Did you write it out yourself or did someone else write it out?

A I wrote it out.

Q When you say here that Special Agent Davis discreetly identified Orsine to the Senegalese authorities, you meant you identified him to Mr. Davis who identified him to the Senegalese authorities?

A That's correct.

Q Now, you say also in Government's Exhibit 6 that various official communications were sent from the United States Embassy to the Senegalese Foreign Ministry regarding the return of Orsine to the United States. Is that correct?

A Yes, sir.

Q You wrote about these because you knew about it.

Is that correct?

Q Otherwise you wouldn't have known anything to write about them. Is that correct?

A I wrote about them because I knew about them.

Q What were these communications?

A These were diplomatic notes between the United States Embassy and Senegalese Foreign Ministry regarding the criminal charges that the United States presently had at that time against Mr. Orsine.

Q What were the contents, if you can recall of those communications?

A Basically as I have stated, but word for word I couldn't tell you.

Q Give us the context as best you can recall. How many communications were there that you saw?

A I would estimate there were approximately three to five communications during the time period.

Q Were these also telegrams or Telexes?

A No, sir. The final draft of these communications I didn't see, however, I was advised these were diplomatic notes.

Q So they were in writing?

A Yes.

Q You got to read them?

A A portion of them.

Q Did they advise the Senegalese Government of what the charges were?

A I don't recall.

Q You read it. Don't you recall whether it said --

THE COURT: Ask him what he recalls and he will tell you.

A As best I could recall, the Senegalese Government requested that the United States Government provide information relative to the charges that the United States had against Orsine which, again, if I recall, there was in one note a mention of the United States Code in which the charges were contained against Mr. Orsine.

Q At what point did the Senegalese authorities ask whether or not Mr. Orsine had ever been in the United States?

MR. DE PETRIS: Objection.

THE COURT: Sustained.

Don't answer it.

MR. GALLINA: Your Honor, --

THE COURT: Ask yournext question.

Q The Senegalese authorities were aware from you or from the people you were working with concerning this

affair that Mr. Orsine had never been in the United States, is that correct?

MR. DE PETRIS: Objection.

THE COURT: Sustained.

MR. GALLINA: Your Honor, --

THE COURT: No, I don't want your discussions. Ask your next question. That's all I want you to do, sir.

Q There was a problem, was there not, with the Senegalese extradition laws, was there not?

MR. DE PETRIS: Objection.

THE COURT: Sustained.

Q You and your fellow agents, in the presence with whom you were working concerning the extradition of Mr. Orsine, were aware, were you not, that the Senegalese were -- were not going to permit extradition because no crime, or Mr. Orsine had never been present in the United States.

MR. DE PETRIS: Objection.

THE COURT: Sustained.

Q Were you ever privy, in other words, did you ever have knowledge of any communications or information that the Senegalese Governmnet was not going to release Mr. Orsine?

MR. DE PETRIS: Objection.

THE COURT: Sustained. I suggest you ask some other questions or questions in some other area, Mr. Gallina.

MR. GALLINA: I will, your Honor, in view of your Honor's ruling.

THE COURT: The ruling was repeated several times. I thought it might be getting to you but it didn't seem to be.

MR. GALLINA: I didn't understand, that was the last question.

THE COURT: Well, you were in that area before and that area was objected to and that area was sustained.

BY MR. GALLINA:

Q Besides yourself, was there any other agent, employee or person who was working on behalf or for the United States Government or Interpol on that aircraft with you?

A Not to my knowledge.

Q During the time that you were in Dakar concerning the extradition, assisting in the extradition -- withdrawn. You remained in Dakar to assist in whatever way you could to secure the extradition of Mr. Orsine to the United States. Is that correct?

A No, sir, that's not correct.

Q Prior to your going to Dakar, at the time that you boarded the plane, you boarded the plane obviously with the purpose in mind in seeing that Mr. Orsine was arrested in Senegal. Is that correct?

A No, sir. I boarded to identify Mr. Orsine to the Senegalese authorities or our representatives in Senegal.

Q In other words, to assist in arresting or apprehending Mr. Orsine?

A No, sir. The purpose I was on the aircraft was to identify Mr. Orsine.

Q But not to identify him for some talent show, but to identify him for the purpose of his being arrested by the Senegalese authorities. Is that correct?

A I repeat. The reason I was on the aircraft was to identify Mr. Orsine.

Q For what purpose were you to identify Mr. Orsine?

A Because the representative of the United States Government in Senegal and the Senegales officials and law enforcement people, to my knowledge, did not know what Mr. Orsine looked like.

Q You were assisting and part and parcel of our Government to see that Mr. Orsine was arrested in Senegal?

MR. DE PETRIS: Objection. Asked and answered several times.

THE COURT: Sustained.

Q Isn't it a fact that you left, you were present in Senegal for one week past the time you made the identification of Mr. Orsine?

A Yes, sir.

Q And for the purpose of assisting in one fashion or another whether for the purpose of receiving Mr. Orsine or making further identification or whatever the purpose was, to perform whatever duties you might be called upon to assist in the extradition of Mr. Orsine to the United States?

A I remained in Dakar, Senegal for approximately one week to provide whatever assistance I could to Mr. Davis of the United States Embassy in regards to the investigation of Mr. Orsine.

Q In regards to investigation or to assist in the expulsion or extradition of Mr. Orsine?

THE COURT: Mr. Gallina, we know this was the purpose to pull this out of this witness. You are not adding anything to what the Court already knows. We know that was the purpose.

MR. GALLINA: If that is conceded --

MR. DE PETRIS: There was a statement by

Mr llina, the concession by the Government is that the agent on the witness stand was in Senegal to receive Mr. Orsine, if during that week period the Senegalese Government either expelled or extradited Mr. Orsine to the United States, he was there to receive him.

THE COURT: He wasn't in a position to arrest him and you kept saying arrest. He wasn't in any position to arrest him.

MR. GALLINA: I don't --

THE COURT: Please ask the next question.

BY MR. GALLINA:

Q Do you have any copies of those communications which you referred to as notes between the Senegalese officials and American officials?

A No, sir, I do not.

Q Have you made reference to them in your reports.

A Other than the report you are referring to now?

Q It is not in that paragraph, 16 or 17, is it?

A I believe it is, sir.

Q You are stating as to the first line in Par. 17: Subsequently various official communications were sent from the United States Embassy to the Senegalese Foreign Ministry. That is what you are speaking of?

A Yes.

Q Did you make any reference to the contents of any of these notes?

A Well, --

Q In any other report or the rest of the body of this report?

A No, sir.

Q Did you at any time make any payment or convey any monies to anybody in Senegal on behalf of the United States concerning matters surrounding Mr. Orsine?

A No, sir.

Q Did anybody, assisting you or working alongside of you or working towards the same purpose with you, to your knowledge, make any such payments?

A No, sir.

Q Did you submit any vouchers to the United States Government for your performance of duties in Senegal or your transport from Argentina to Senegal?

A Not as yet.

Q Have you prepared these vouchers?

A Yes, sir, I have.

Q Do you have them?

A Not with me.

MR. GALLINA: I would ask that they be produced

for my examination.

THE COURT: For what purpose?

MR. GALLINA: I wish to look at those vouchers to determine the effect and purpose of such payments --

THE COURT: Of what payments?

MR. GALLINA: Whatever payments they were.

THE COURT: Ask him whatever the payments are in the voucher.

Q What are the payments for?

A In regard to hotel accommodations, meals, the buff copy of the GTR which they utilized to purchase the ticket. As best I recall, that would be the extent of the voucher. The expenses in regards to normal per diem items.

THE COURT: Application for the voucher is denied.

THE COURT: I understand that, your Honor.

Q You have available to you, do you not, a special fund for making payments --

MR. DE PETRIS: Objection.

THE COURT: Finish your question then I will entertain the objection.

Q -- for making payments to, say, informants or Interpol or any other agency or outfit or person who may assist you or your outfit in its endeavors, is that correct?

MR. DE PETRIS: Objection.

THE COURT: I will permit that but he may ask the use of this fund for the payment of anyone in Dakar, Senegal, during the time he was there for this particular case. I will permit it.

Do you have such a file?

THE WITNESS: No, sir.

THE COURT: He says no.

Q You don't have any access to any such monies?

A No, sir.

Q And you have never used monies to pay informants or pay for information?

A Yes, sir.

Q How do you gain access to such monies?

MR. DE PETRIS: Objection, your Honor. How is that relevant to this particular investigation?

THE COURT: The objection is sustained. I will permit him to -- permit Mr. Gallina to ask him if any money was paid to any informants by him or under his direction while he was in Dakar, Senegal for this case.

I will let you ask him that.

A No, sir, I did not pay anyone.

Q I know you didn't. Were you knowledgable of

of any payments?

A No, sir.

Q Did you have in your possession any electronic recording devices when you were in Senegal?

A No, sir.

Q Did you have any transmitter such as bugs or devices known here as bugs?

A No, sir.

Q Did you ever have a conversation with Mr. Orsine?

A No, sir.

Q Did you ever get at any point while you were in Senegal -- get to see the wife of Mr. Orsine or his children?

A The wife --

THE COURT: Do you mean for speaking or at a distance?

Q Seen them, observe them from any distance?

A I observed Mr. Orsine's wife from a distance.

Q That was in the airport, was it not?

A Yes.

Q That was at the time Mr. Orsine was taken into custody by the Senegalese authorities on the 7th of August, is that correct?

A Yes.

Q Do you know how she got off the plane?

A No, sir.

Q Did you ever make a copy of the manifest, the passenger manifest on that plane?

A No, sir.

Q And what was the flight number?

A Ninety six.

Q Leaving Buenos Aires, is that correct?

A Yes.

Q Flying to Dakar?

A Dakar was the first stop on that flight.

Q Did Mr. Orsine ever protest to you or to anybody else, of the taking into custody at the airport?

A He didn't protest to me. He may have protested to someone else, I have no knowledge of that.

Q You didn't overhear that --

MR. DE PETRIS: Was there a question?

THE COURT: He said he had no knowledge.

Q I said you didn't hear of anything from Mr. Orsine, did you?

A No, sir.

Q Did you ever return to Dakar after leaving on the 7th -- not the 7th, that would be around the 14th?

A That's correct. Since the time I left I have never been back.

Q You have never been back?

A That's correct.

Q Did you leave behind any fellow agents from your command in Buenos Aires?

A No, sir.

Q Did any of your fellow agents ever go to Dakar?

A No, sir.

Q The Senegalese officials, were they uniformed or were they in plain clothes, ordinary street clothes?

A Ordinary street clothes.

Q So you don't know whether or not they were police officials, do you, as of your own knowledge?

A No. With respect to seeing identifications, no, sir.

Q Pardon me?

A With respect to seeing identification, no, sir.

Q And you don't speak French. Is that correct?

A That's correct.

Q And they were speaking French?

A Which sounded to me to be French.

Q They didn't speak to you in Spanish, did they?

A In Spanish, no. I believe one of the gentlemen

stated, "I don't speak English." He said that in English.

Q You can't testify from your own knowledge whether or not they were Senegalese officials. They could have been French officials, from any area of the world, so far as you are concerned?

A That's correct.

MR. GALLINA: I have no further questions.

THE COURT: Any redirect?

REDIRECT EXAMINATION

BY MR. DE PETRIS:

Q You were asked on cross-examination by Mr. Gallina if you saw the wife of Dominique Orsine at any time while you were in Dakar and you answered approximately at the time of the arrest of Dominique Orsine?

A That's correct, in the airport.

Q When you say approximately, was it, as best you can recall, was it when Mr. Orsine was being arrested, was it before or after? When do you recall?

A If I recall well, it was either directly at the time Mr. Orsine's arrest or shortly thereafter.

MR. DE PETRIS: That is all.

THE COURT: Mr. Gallina, any further questions?

MR. GALLINA: No, I have no further questions at this time.

THE COURT: Are you sure?

MR. DE PETRIS: Your Honor, this agent is from Buenos Aires and will be leaving.

THE COURT: That's all right.

MR. GALLINA: I would make an application at this time to have this agent be made available to me during the rest of the hearing just in case there is a necessity for, and of course, I may find the necessity of having this agent necessary during the trial.

THE COURT: I don't know. I think you can complete whatever you have to do with this agent right now and I think you should.

MR. GALLINA: I have no idea why I might want to call him.

THE COURT: If you have no idea why you might want to call him, I would think you don't need him.

MR. GALLINA: That is a fair statement but my --

THE COURT: Well, I wouldn't hold him if you have no idea and this man has come halfway across the world to be here for this hearing and this hearing is at your request and your insistence. As far as the Court is concerned, if you have nothing further to ask him, this agent is excused and may leave.

MR. GALLINA: Well, your Honor, may I ask one or two questions?

THE COURT: Of course.

Q You say that he was arrested, is that correct?

A He was detained.

THE COURT: Mr. Gallina, he didn't participate. He didn't understand the language. He didn't know who they were. They didn't have on uniforms. He doesn't know what they did or whether they arrested him or whether they just picked him up off the street and walked him in, and this man is not a witness for that. But you can ask him what you want.

Q Was there any other Special Agent present at the time that you were present at the airport?

A No, sir.

Q Was there any other agent such as an FBI agent, or CIA agent, et cetera, present at the airport?

MR. De PETRIS: Objection.

THE COURT: Answer it if you can.

A Yes, sir.

Q Who was that?

A The other Embassy official.

THE COURT: You mean Mr. Davis?

THE WITNESS: Besides Mr. Davis.

THE COURT: There was another Embassy official?

THE WITNESS: Yes.

THE COURT: Do you know who it was?

THE WITNESS: Yes.

THE COURT: Who was it?

THE WITNESS: Mr. Patty. I don't know how to spell it.

Q P-a-t-t-y it might be?

A Could be.

Q What is his status with the Embassy, do you know?

MR. De PETRIS: Objection.

THE COURT: No, he can tell him. Do you know what his status was?

THE WITNESS: No, sir.

Q Do you know whether or not he was with the CIA?

MR. De PETRIS: Objection.

THE COURT: Sustained. He told you he doesn't know what his status is.

Q Do you know what his title was?

A No, sir.

Q Did he take any part in the conversation between the plainclcthes or street-dressed persons who were speaking

French and Mr. Davis?

A Not to my knowledge.

Q What did you see him do?

A Nothing.

Q Were there any Marine guards there?

A No, sir.

Q Did you speak to any Marine guards?

A When?

Q While you were sitting in Senegal.

A Yes, sir.

Q And when was that?

A It would be almost every day that I remained in Dakar.

Q Do you mean coming in and out of the Embassy?

A Yes, that's correct.

Q I mean did you speak to them meaningfully or substantively concerning Mr. Orsine's matter in Senegal?

A No, sir.

Q Did you ever obtain the name of the pilot of the Air France aircraft?

A No, sir.

Q Do you have a copy of your ticket on that plane?

A With me? No, sir.

THE COURT: He had a copy that he has with his voucher. He said he had that.

MR. GALLINA: Could we have that produced, your Honor?

THE COURT: I do not see why you have to have.

MR. GALLINA: Well, I would --

THE COURT: I believe he was on that plane. Do you have some reason to doubt it?

MR. GALLINA: There is something that I am concerned with, the date of the ticket, your Honor.

THE COURT: The date of the ticket?

MR. GALLINA: That is correct.

THE COURT: I see no reason --

MR. GALLINA: Well, if I were to serve a subpoena then --

THE COURT: I see no reason. Everytime I turn around you are serving a subpoena for something.

Are you finished with this witness? Do you want to ask him any more questions?

MR. GALLINA: No.

THE COURT: Are you sure you are finished with him?

MR. GALLINA: I am sure, your Honor, I have no need for him presently at this point. But I do ask

your Honor to ask him to remain sufficiently long in this country so that if there is a reason for my using him here now during the hearing or during the trial, he will be available.

THE COURT: At trial?

MR. GALLINA: Well, I realize that the trial will be --

THE COURT: At trial?

MR. GALLINA: He might be necessary for trial.

THE COURT: The man's name is Mr. Tryal. You are now excused. You may leave. Thank you.

THE WITNESS: Thank you.

MR. De PETRIS: Your Honor, could we take a 10-minute recess now?

THE COURT: Surely.

(Short recess.)

(After recess.)

MR. De PETRIS: Your Honor, Mr. Fields was just handed a subpoena by Mr. Cutler, I believe, requesting that Mr. Fields appear on November 25, 1975 and bring with him copies of any and all letters, telegrams, cables, records of communications, vouchers, disbursement records, et cetera, concerning efforts to obtain custody of Dominique Orsine by extradition, expulsion

or other means from Argentina and Senegal or France in 1975.

THE COURT: Let me have that subpoena.

Mr. Gallina, Mr. Fields is here in court. Do you wish to question him now? If you wish, you can put him on the stand.

MR. GALLINA: No, not at all, your Honor.

THE COURT: This subpoena is vacated by order of the Court.

MR. GALLINA: It is not a personal subpoena. It is a subpoena duces tecum, your Honor.

THE COURT: I am vacating it right now. November 21, 1975.

Now, from here on the order of this Court is that if you, Mr. Gallina, wish to issue any subpoenas on any witnesses who are here appearing before the Court that you will notify the Court and request permission before you so do.

MR. GALLINA: I will do so.

THE COURT: For any witness that is here before the Court.

MR. GALLINA: I will do so.

THE COURT: Mr. Fields, you may ignore this subpoena.

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MR. FIELDS: Yes, your Honor.

MR. GALLINA: Your Honor --

THE COURT: You may ignore it.

MR. GALLINA: I think perhaps I can assist us all in not wasting any time and also wasting any monies by causing the Government to gather up information that I might subpoena and then have the Government move to quash.

THE COURT: Mr. Gallina, you will assist if you wait and when your time comes and you want to put on your evidence you put on what you want.

The Government will proceed with the Government's case. You are not assisting the Court by giving us directions.

MR. GALLINA: No, no, your Honor. I am just asking --

THE COURT: You are not assisting the Court when you come up and you do this type of thing knowing that it shouldn't be done.

MR. GALLINA: No, your Honor, I don't believe that's true. May I at this time --

THE COURT: Well, as far as the Court is concerned we have discussed all of this. We will proceed with the Government's case. There is no use in going into it. Here is your subpoena. So ordered.

2/2 fols.

MR. DE PETRIS: The Government calls Special Agent Jim Collier.

J A M E S C O L L I E R , called as a witness, having been first duly sworn by the Clerk of the Court, took the stand and testified as follows:

THE CLERK: State and spell your name for the Court Reporter.

THE WITNESS: James Collier. C-o-l-l-i-e-r.

DIRECT EXAMINATION

BY MR. DE PETRIS:

Q Mr. Collier, by whom are you employed?

A Pardon?

Q By whom are you employed?

A United States Department of Justice Drug Enforcement Administration.

Q How long have you been employed by that organization?

A Five years and eleven and a half months.

Q And in what capacity do you serve at the present time?

A Special Agent --

MR. GALLINA: Your Honor, I can't possibly have the interpreter keep up with the pace of the questions and answers.

THE COURT: Well, we will try to go a little slower in order that the interpreter can keep up and in order that the defense won't have so difficult a time.

MR. DE PETRIS: Yes, your Honor.

Q In what capacity are you presently serving with the Department of Justice Drug Enforcement Administration?

A I am a Special Agent, Criminal Investigator.

Q To what area of the world are you assigned?

A Europe.

Q And where is your office located?

A Paris, France.

Q I direct your attention --

MR. GALLINA: May I have one moment?

(Mr. Gallina confers with defendant out of hearing of Reporter.)

Q (Continuing) I direct your attention to August of 1975. Were you at that time assigned to Paris, France?

A Yes, I was.

Q Directing your attention to August 24, 1975 did you have occasion to travel from Paris, France to Dakar, Senegal?

A Yes, I did.

Q Was that on instructions that you had received?

A Yes, it was.

Q And those instructions were issued by the Drug Enforcement Administration Headquarters in Washington?

A Yes, sir.

Q Were you told the purpose of that trip to Dakar, Senegal?

A Yes, I was.

Q What was the purpose of that trip?

A To assist in escorting a prisoner back to the United States.

Q Were you advised of the name of the person?

A Yes, I was.

Q What was the name?

A Dominique Orsine.

Q Now, could you relate to the Court approximately when you arrived at Dakar, Senegal?

A I arrived aboard an Air Afrique flight from Paris approximately 3:30 A.M. on the 24th of August, 1975.

Q Now, that would be Senegalese time; is that correct?

A Senegalese time.

Q When you arrived at Dakar, at the airport, where did you go?

A To the Hotel Taranga.

Q And when you arrived at the hotel were you met by anyone?

A Yes, I went to the hotel room that I shared with Mr. Fields and Mr. Bocchichio.

Q And Mr. Bocchichio was the Special Agent for the Drug Enforcement Administration?

A Yes, sir.

Q Now, did you remain with Special Agent Bocchichio and Louis Fields of the State Department during Sunday, August 24, 1975?

A Yes, sir.

Q Was there a period of time on August 24, 1975 when you were out of the company of Louis Fields?

A Yes, I was.

Q Was that during an approximate two or two and a half hour period when you went to dinner?

A That is correct.

Q At that time did you go with Special Agent Bocchichio when you went to dinner?

A Yes.

Q So you and he were together the entire time on August 24, 1975 from the time that you arrived in Dakar? Is that correct?

A Yes.

Q Now, did you have occasion to see Dominique Orsine on Augu't 24th, that is Sunday?

A No.

Q Did you have occasion on August 24th to see a representative of the Government of Senegal?

A No.

Q I am directing your attention to August 25, 1975. Did you have occasion to leave Dakar on that date?

A Yes, I did.

Q Do you recall approximately when that was?

A I left at approximately 6:00 A.M. on the 25th of August.

Q So you were in Dakar, Senegal for a period of a little more than twenty-four hours; is that correct?

A That is correct.

Q Now, during the early morning hours of August 25, 1975 did you have occasion to see Dominique Orsine?

A Yes, I did.

Q Would you indicate to the Court where it was when you first saw Dominique Orsine?

A I saw Mr. Orsine as he exited an enclosed van at the foot of the aircraft.

Q This is at the airport in Dakar?

A At the airport in Dakar.

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Q And were you with anyone at that time?

A I was with Mr. Fields. I was with Mr. Bocchichio and representatives of the Embassy in Dakar.

Q The American Embassy?

A That is right.

Q Now, would you indicate to the Court what happened when Mr. Orsine exited the van during the early morning hours of August 25, 1975?

A He exited the van in an extremely agitated state. He was accompanied by police officers --

Q When you say a police officer are you referring to the police officers of the Government of Senegal?

A That is correct.

Q Please continue.

A He was making an effort to extricate himself from their control and was generally boisterous and uncontrollable.

Q And what happened after he exited the van?

A The authorities who accompanied him --

Q When you say "the authorities," were they American representatives or Senegalese?

A No, Senegalese authorities maintained control of Mr. Orsine and took him into the aircraft.

Q Do you speak French?

A Yes, I do.

Q Did you have any conversation directly with any representative of the Senegalese Government?

A No.

Q During the entire period of time that you were in Senegal?

A No contact.

Q Now, when Mr. Orsine was taken aboard the plane what happened then?

A As he was taken aboard?

Q Yes.

A He was taken aboard the plane very much resisting efforts to place him aboard the plane.

He was taken into the Second Class section of the aircraft, seated in the center of three seats, at which time Mr. Bocchichio and I took over control of Mr. Orsine.

Q Now, during the time that he was being taken aboard the aircraft did you have occasion to hear anything that Mr. Orsine said?

A Himself to me, to the officers?

Q To any representatives or any police officers of the Senegalese Government.

A Yes.

Q Now, these statements, did any of these

statements concern his -- I am talking about prior to his being seated in the aircraft but as he was being brought on the plane -- did any of the statements that he made at that time concern his treatment while he was in Senegal?

A No.

Q Now, did there come a time when he was seated in the aircraft?

A When he was --

Q When he was seated in the aircraft.

A Yes.

Q Did you take a position in the vicinity of Mr. Orsine at that time?

A I was sitting directly to his right.

Q And where was Mr. Bocchichio?

A To his left.

MR. GALLINA: May we slow down a little bit, your Honor? It is sort of rapid-fire.

THE COURT: Right. You have to slow it down a little.

MR. DE PETRIS: Yes, your Honor.

Q During the course of time from the period of time that Mr. Orsine began to exit from the van until the time that he was seated in the aircraft did you observe Mr. Orsine strike anyone?

A No.

Q Did you observe him to be scuffling with anyone?

A Yes.

Q With whom was he scuffling?

A He was scuffling with the Senegalese authorities, the police authorities.

Q Did you yourself at any time strike Mr. Orsine?

A No.

MR. GALLINA: Your Honor, I object at this point. I have made no objection up to this point about leading questions. And they are not only leading but they are conclusory, you know. I do not mean to be obstreperous but I ask from now on that counsel be asked to ask ordinary questions even though it is a hearing.

MR. DE PETRIS: Your Honor, this type of hearing which Mr. Gallina has requested, as far as the Government is concerned, is a negative type of hearing where the Government in essence must produce evidence that they didn't do something. Now how else can it be produced --

THE COURT: The objection is overruled. You may answer that question just as it was asked.

Q Did you ever strike Dominique Orsine?

A No.

Q Did you observe Special Agent Bocchichio strike Dominique Orsine?

A No.

Q Did you observe any American official strike Mr. Orsine?

A No.

Q Did you observe any representative of the Senegalese Government strike Mr. Orsine?

A No.

Q Did you observe anyone at any time strike Mr. Orsine?

A Absolutely not.

Q Now --

THE COURT: Go into the area of the agents.

Q How many agents of the Drug Enforcement Administration were in Dakar, Senegal while you were there?

A Myself and Mr. Bocchichio, two.

Q Did you ever pay any representative or police official of the Republic of Senegal any money or anything of value in connection with the extradition or expulsion of Dominique Orsine?

A No.

Q Now, after Mr. Orsine was seated in the aircraft did there come a time when a doctor entered the aircraft?

A Yes, there was.

Q Now, prior to the doctorappearing in the area where you and Mr. Orsine and Mr. Bocchichio were seated, had you had any knowledge that it was a doctor who was going to be there?

A No.

Q Now, when the doctor arrived -- by the way, do you recall his name?

A Dr. Green. That is all I know.

MR. GALLINA: Your Honor, I object to the questions. Every one of these questions assumes facts which are not in evidence through this witness and assumes that he is going to say that such as --

THE COURT: Well, he did say what the doctor's name is. And it is in evidence.

MR. GALLINA: It is not a concern with the doctor's name.

THE COURT: What is that?

MR. GALLINA: I don't object to that. But the fact where did the doctor come from? He wasn't present there beforehand. And didn't that occur when

he did arrive? And the assumption is that he wasn't on the plane.

THE COURT: And, Mr. Gallina, you will have much to do on cross-examination. It will be much more extensive than this. And at that time you will bring out whatever you want. This hearing is at your insistence. It is for your benefit.

MR. GALLINA: Your Honor, you have mentioned on several occasions --

THE COURT: It may not be benefiting you the way you wish to be benefited, but we are trying --

MR. GALLINA: Your Honor, you have mentioned it is at my insistence. May I have the record indicate that any time there is a violation or an alleged violation of a constitutional right of a defendant before these courts that is an allegation against the Government and the hearing that is granted by the Court, by your own words, is one granted as a matter of law. It is not something that the defendant finds as a gift or is given to him as a benefit. It is a right --

THE COURT: Well, the defendant is getting it for a certain specific purpose.

MR. GALLINA: But he has a right to this hearing.

THE COURT: If the defendant didn't insist on it the defendant would never get it.

MR. GALLINA: We are all entitled to our rights.

THE COURT: I did not say you should not do it. All I say is if you ask for it you are asking for it.

Q Agent Collier, what happened when the individual you identified as Dr. Green arrived in the vicinity of the area where you and Mr. Orsine and Mr. Bocchichio was seated?

A I was asked to advise Mr. Orsine in French that the doctor was present and that he was to be given a light sedative.

MR. GALLINA: I can't hear him.

THE COURT: He said I was asked to advise Mr. Orsine in French that the doctor was present and he was to be given a light sedative.

Q And who asked you to do this?

A Mr. Fields.

Q I am sorry?

A Mr. Fields.

Q And did you so advise Mr. Orsine?

A I did.

Q And what happened then?

A Mr. Orsine seemed reluctant to have the

injection.

Q And what happened then?

A At this time, Dr. Green came up and introduced himself as well.

Q Did he speak French?

A He spoke French.

(continued next page)

Q What happened after Dr. Green introduced himself?

A Dr. Green explained again in French the purpose of his presence and what he intended to do.

Q What happened then?

A Mr. Orsine rolled up his arm and he was given an injection --

Q Rolled up --

A Rolled up his sleeve.

THE COURT: Which arm was it given in?

THE WITNESS: The right.

THE COURT: The right arm.

Q That was the arm that was closest to you; is that correct?

A Yes, that is correct.

THE COURT: Was it rolled up above the elbow?

THE WITNESS: It was rolled above the elbow.

THE COURT: Mr. Orsine did that himself?

THE WITNESS: Yes, sir, he did.

THE COURT: Did he have handcuffs on at the time?

THE WITNESS: No.

Q Now, after the injection was administered to Mr. Orsine, did there come a time when you advised Mr. Orsine of his constitutional rights?

A I did.

Q In what language did you do that?

A French.

Q And subsequent to the advising of Mr. Orsine of his rights did you have a conversation with him concerning his treatment by the Senegalese?

A I did.

Q Will you relate to the Court as best you can, exactly what you said to Mr. Orsine and what Mr. Orsine said to you?

A Mr. Orsine had a wound on his right wrist. And the conversation shortly after take-off, I asked him what happened. And he explained in general terms that the Senegalese authorities had advised him the evening before, that would be Sunday evening, that they would come into his cell and wake him up at approximately 9:00 o'clock in the morning. They did not come into the cell at 9:00 o'clock in the morning but instead they came into his cell at approximately 3:00 or 3:30. They woke him up and they instructed him to come with them, to follow them. He told me there were five or six officers at the time.

He said he became scared. He did not go. He asked the authorities why they wanted him to go and where they were going.

They responded to his questions solely by saying it was necessary that he go with them.

He said he became scared and he moved towards the back of his cell, backed up. As he did so he looked to the back and in the back of his cell there was a broken window where there was a raw piece of jagged glass. And when it was obvious to the authorities that he was not going to cooperate, he was not going to do as he was instructed, they came toward him to take him out and he ran his wrist across the broken glass.

Q What else did Mr. Orsine tell you?

A Generally, I asked him how was his treatment while in prison, and he said he was treated neither poorly nor was he treated exceptionally well, but he was given the treatment he saw normally accorded all of the other prisoners.

Q Did you have any further conversation with Mr. Orsine concerning his stay in Senegal?

A Through the conversation he went on and related simply what it is -- the type of food he had to eat. He described rice balls that he had, cooked rice in ball form with partially cooked fish -- with cooked fish in it, something that he wasn't necessarily used to, something he didn't like, and occasional juices to drink, fruit juices to drink.

Q Was that the extent of your conversation with

Mr. Orsine concerning his treatment in Senegal?

A Yes, sir.

Q Now, was this conversation had with Mr. Orsine during the time that the plane was still on the ground, or was it while the plane was in the air, or both?

A It was in the air.

Q It was after leaving Dakar?

A After departure, that is right.

Q Was it a direct flight from Dakar to John F. Kennedy International Airport?

A That is correct.

Q What happened when Mr. Orsine arrived at John F. Kennedy International Airport?

A Upon arrival Mr. Bocchichio and I waited, and Mr. Fields waited until all passengers had deplaned. We were alone on board the aircraft. The members of the DEA staff at Kennedy Airport came on board. And we escorted Mr. Orsine into the airport lounge.

Q Now, did Mr. Orsine indicate to you in any way during your conversation with him on the aircraft that he had been beated by anyone during his stay in Senegal?

A No.

Q Did he indicate any way he had been tortured by anyone while he was in Senegal?

A Never.

Q Now, did he have any conversation with you concerning any treatment he received concerning his cut on his arm or wrist?

A He said simply that he had been -- after wounding himself he was taken from the cell. He was taken to a hospital where a doctor treated him. He was given several injections. He didn't know the nature of the injections. He didn't describe them except they were injections around the wound and that the wound itself was treated.

Q Now, during the flight from Dakar to the United States did you have occasion to observe any of the areas of Mr. Orsine's body?

A Yes, I did.

Q When did this occur?

A Specifically, just prior to -- approximately one hour prior to landing in New York.

Q And what were the circumstances under which you observed any particular area of his body that wouldn't normally be exposed?

A We, meaning Agent Bocchichio and I, took Mr. Orsine at his request to the toilet at the rear of the aircraft. He was able to take his shirt off. He was permitted the opportunity to shave and wash himself, and to use

deodorant and to make himself presentable. It had been an uncomfortable flight for him.

Q He had taken his shirt off, did you say?

A Yes.

Q And while his shirt was off did you have occasion to observe any bruises or any fresh bruises or anything of that kind on his stomach or his back?

A No.

Q Or chest?

A No.

(continued next page)

Q Now, during the course of the flight and prior to Mr. Orsine being seated, you heard him -- prior to him being seated in the aircraft, you testified you heard him make certain statements to the Senegalese police?

A Yes.

Q Those statements did not concern his treatment is that correct?

A That's correct.

Q Did you have occasion to have a further conversation with him after you advised him of his rights? And did he make statements to you concerning matters other than his treatment by the Senegalese?

A Yes.

MR. DE PETRIS: I have nothing further.

THE COURT: Cross-examination, Mr. Gallina.

CROSS-EXAMINATION

BY MR. GALLINA:

Q Have you had an opportunity to read the testimony of any prior witness in this hearing?

A No.

MR. DE PETRIS: We don't have the testimony. It was not given to us.

THE COURT: Well, that's a question. The answer is "No," anyway.

Q Have you had an opportunity to discuss the testimony of any other prior witnesses during this hearing? With them or with Mr. DePetris?

A Prior to the hearing?

Q Yes. Prior to your coming here right now this minute.

A No.

Q You have not spoken to Mr. Fields concerning his testimony?

A What he was going to say or what he said?

Q What he said, yes.

A No.

Q Nor any other agent whotestified here?

A No.

Q Or to Mr. DePetris concerning it?

A No.

Q Now, Mr. Orsine, you say, is on the airplane and seated between you and Mr. Boechichio, Special Agent Boechichio, and he voluntarily rolls up his sleeve and voluntarily submits to an innoculation of some type; is that correct?

A That's correct.

Q He consents to this; is that correct?

A That's correct.

Q And he did not have any handcuffs on him; is that correct?

A Pardon me?

Q He did not have any handcuffs on him?

A Handcuffed on his left hand.

Q Where was the other end of the --

A Pardon me?

Q Where was the other end of the handcuff?

A Attached to his seatbelt.

Q Now, what were the warnings that you gave him, Mr. Orsine?

A The warnings were the same warnings we give to all prisoners upon arrest.

Q Well, what did you say to him?

A If you will permit me?

Q You're reading from something now; is that correct?

A I read from the same card.

Q That card right there?

A Translated in French.

MR. GALLINA: Could we have it marked for identification, your Honor?

THE COURT: Why don't you look at it? I don't think the Court needs that.

Can we have a photostatic copy made of that?

MR. GALLINA: I have no objection. A photostat would be fine.

MR. DE PETRIS: I can have a photostat made.

MR. GALLINA: It can be deemed marked at this point.

THE COURT: Well, in the meantime, let's use it and let's complete it, and then we will photostat it after.

Q You read every one of these questions?

A That's correct.

Q To him?

A That's correct.

Q And as to the first question, "Before we ask you any questions, it is my duty to advise you of your rights."

What did Mr. Orsine say, if anything?

A He said nothing.

Q As to the second question:

"Do you understand that you have a right to remain silent?"

What did Mr. Orsine say, if anything?

A Yes.

Q And as to the third question:

"Do you understand that anything you say can and

will be used against you in court or other proceedings?"

What did Mr. Orsine say?

A That he understood.

Q As to the fourth question:

"Do you understand that you have the right to talk to a lawyer before we ask you any questions, and to have him with you during the questioning?"

What did he say to that?

A He said he understood.

Q And as to the fifth question, where you stated:

"If you cannot afford or otherwise obtain a lawyer and you want one, a lawyer will be appointed for you by the U.S. Magistrate or the Court, and we will not ask any questions until he has been appointed."

What did he say?

A He said he did not have an attorney.

Q And as to the sixth question:

"If you decide to answer now with or without a lawyer, you still have the right to stop the questioning at any time, or to stop the questioning for the purpose of consulting a lawyer."

What did he say?

A He said he understood.

Q And you state that you then -- or you implied that

you then said, "However, you may waive the right to advice of counsel and your right to remain silent, and you may answer questions or make a statement without consulting a lawyer if you so desire."

Did you make that statement?

A Yes.

Q What did he reply to that?

A He said he understood.

Q Did you say to him:

"Do you understand your rights?"

A He said, "Yes," he understood his rights, and he didn't have an attorney.

Q Yes. Did you ask him if he elected to waive them?

A Yes.

Q What did he reply to that? Tell me.

A Pardon me?

Q What did he tell -- reply?

A He neither elected to waive them nor did he voluntarily make comments.

Q You mean to tell us that after all these warnings and after all these warnings, and he gave you all these responses, and then he began to talk to you; is that correct?

A No.

Q Well, when did he start talking to you?

A I simply asked him, what happened.

Q Right then?

A Not right then. Later on.

Q How soon after?

A Fifteen minutes or so.

Q Fifteen minutes.

And what did he say?

A He repeated that the Senegalese authorities had told him that they would come to get him at 9:00 o'clock, to wake him up at 9:00 o'clock the next morning. This would be the morning of the 25th.

However, at approximately 3:00 -- between 3:00 and 3:30 A.M. on the morning of the 25th, a number -- and he specifically said six or seven police officers entered his cell and instructed him to go with them.

He said at this point he was scared. He asked them why did they want him to go with them, and where were they taking him?

He stated in response -- or they stated in response to his question, that he was going with them. He said he was frightened. He did not know why that he was going with them.

Q Then he told you in essence that he wounded

himself; is that correct?

A That's absolutely correct.

Q And he never told you he was beaten by anybody; is that correct?

A That's correct.

Q Did he ask you who the American agents were in the van?

A No.

Q He never mentioned American agents who were speaking English in the van?

A No.

Q Did you speak to any of the Senegalese officers who escorted Mr. Orsine on the plane?

A On one occasion. One occasion only. After Mr. Orsine was seated, there was a Senegalese officer on either side of him. I simply said that we would take over.

Q Now, did you speak to them in French or English?

A That's correct. In French.

Q In French.

Tell me, when Mr. Orsine exited from the van, describe his clothing, would you please?

A Describe his clothing?

Q Yes.

A He was wearing a button-down sport shirt, short

sleeves, gray slacks. As I recall, he had like slip-on shoes. Low slippers. Generally, that was it.

Q No jacket?

A No jacket.

Q And he rolled up the short-sleeved shirt; is that what he did?

A Pushed his arm up. It was like a three-quarter sleeve. Pushed it up.

Q Now, was he wearing shoes or was he wearing these slippers as he exited from the van?

A I don't believe so.

Q He was being carried by the Senegalese officers?

A He was struggling. That's correct.

Q They were holding him by the feet and by the arm or by the back carrying him along; is that correct?

A That's correct.

Q That's the way they carried him right out of that van; is that correct?

A No. He came jumping out of the van.

Q He came jumping out?

A He came jumping out of the van.

Q When was it that they carried him?

A They carried him when he began to throw himself toward the ground, to resist being taken aboard the aircraft.

Q Is it possible for you to describe for us exactly the actions, please, as you observed them? Testifying as if you were observing him.

A What actions?

Q Well, the actions you saw of Mr. Orsine coming out of the van.

A He was flailing with his arms and legs. He didn't walk out. He jumped out. Combination of jumping and falling.

Q Then what happened?

A On the ground he continued to flail his arms, to throw off the police officers who were holding his arms, maintaining control of them.

Q Then what happened?

A They continued to attempt to maintain control.

Q You say "maintain control." Tell us what they did.

A They were holding him.

Q Okay.

A They were holding his arms.

Q What were they holding them with?

A Their hands.

Q What happened when they held -- how many officers were there holding him?

A I would say five or six.

Q What did they do then?

A When he continued to resist violently -- and I would say violently by flailing his arms and kicking off his legs in their direction -- they picked him up bodily and proceeded to carry him aboard the aircraft.

Q Did you give any orders to the Senegalese officers at any time?

A At no time.

Q Did you make any request of them?

A Yes.

Q Did any officers give orders to the Senegalese officers?

A What officers?

Q Any other officer, Mr. Boechichio?

A No.

Q Did Mr. Boechichio speak to the Senegalese officers at that time?

A No.

Q Did Mr. Boechichio speak Spanish or French?

A No.

Q Was Mr. Boechichio wearing a beard at that time?

A No.

Q Who was the person who had a beard at that time?

A It was me.

Q And Mr. Boechichio's first name is what?

A Anthony.

Q Anthony.

Do you have --

THE INTERPRETER: I am sorry. The defendant is interested --

THE COURT: Now, you will have to slow down.

MR. GALLINA: I am sorry.

Q Do you have a handkerchief?

A Do I have any?

Q Yes.

A Yes.

Q Can I see your handkerchief?

MR. DE PETRIS: Your Honor, I assume that Mr. --

MR. GALLINA: I have a reason for asking the question.

Q Thank you.

THE COURT: Is that some sort of sign language? You turned it over about three times.

MR. GALLINA: No.

THE COURT: Or was that --

MR. GALLINA: I was looking for something.

THE COURT: Was that casting a spell?

MR. GALLINA: No, your Honor. I wish I could. It might help me.

THE COURT: Might help.

Q Now, who purchased the ticket that you utilized in going from Paris to Dakar?

A The United States Government.

Q Somebody else purchased it for you?

A The embassy. They obtained it. That's correct.

Q What embassy?

A The American Embassy in Paris.

Q Paris did.

When were you presented with the ticket?

A I obtained the ticket, as I recall, Friday evening.

Q That would be the 22nd?

A The 23rd. The 22nd. That's correct.

Q That's correct.

And when was it that you were first told that you were going to -- withdrawn.

You were told, as you testified previously, that you were going to go to Dakar to escort a prisoner back to the United States; is that correct?

A That's correct.

Q And the reason for your going is that you had

an expertise in French or at least could speak French?

A No.

Q No, that is not the reason?

The reason is we are required to have two agents escort pris ners.

Q All right. You were told that it was necessary to have another agent there?

A That's correct.

Q And that you were going to escort -- were you told whom you were going to escort back to the United States?

A Yes, I knew.

Q Who told you?

A My supervisor.

Q Who was your supervisor?

A Mr. Kevin Gallagher.

Q Where is Mr. Kevin Gallagher located at the time he told you this?

A His office is in Paris, France.

Q Is he still stationed there?

A He is.

Q When you say supervisor, is he a group supervisor?

A He's the administrative -- I guess you would call him group supervisor. That's correct. He's the Assistant Regional Director.

Q In Paris; is that correct?

A In Paris.

Q What date did he tell you this?

A The 21st.

Q On the 21st? That would be --

A Thursday.

(continued next page)

Q And he told you, you had to be in Dakar on what day?

A He didn't say what day.

Q Well, did he tell you what day you were leaving?

A We were advised that the prisoner would be leaving Monday.

Q All right.

THE COURT: Mr. Gallina, we have the photostat.

MR. GALLINA: Thank you.

THE COURT: The card.

MR. De PETRIS: Do you want to compare it?

MR. GALLINA: No.

THE COURT: So we will mark it for identification and the agent may keep his card.

THE CLERK: Two-page document, DEA Form 113A, marked Government Exhibit No. 7 for Identification.

Q This communication from Mr. Gallagher, was it an oral communication or written communication?

A Oral.

Q Approximately what time on the 21st did he give you this communication?

A I'd -- that would be impossible for me to say.

Q Well, was it the morning, afternoon?

A Afternoon.

Q Tell me in essence just -- as best as you can recall, what did he say to you and what did you say to him in return?

A He simply said that I was prepared to stand by to travel to Dakar in the event assistance was needed to escort a prisoner from Dakar, the prisoner being Dominique Orsine from Dakar to New York City. My response was, yes.

Q Did he tell you whether or not he had already purchased or already obtained permission to have the ticket purchased?

A Pardon me?

Q Withdrawn.

When was the ticket purchased? Do you know?

A Friday.

Q It was purchased on Friday. Were you there when it was purchased?

A To the best of my knowledge. No, I was not.

Q Do you know who purchased it?

A The American Embassy.

Q Do you know who at the American Embassy purchased it?

A No. The travel section at the American Embassy makes all travel arrangements for the people stationed at the Embassy.

Q Did you speak to anybody at the Embassy, any person's name that you could recall who further obtained that ticket?

A No.

Q Do you recall what flight it was?

A From Paris to Dakar?

Q Yes.

A It was an Afronique flight. I forget the exact flight number. But it departed Paris at approximately 8 o'clock; 8 p.m.

Q What day?

A It would be Saturday night.

Q And you don't recall the flight number?

A No, I don't.

Q And where was its final destination?

A Dakar.

Q And do you know where it originated in?

A Paris.

Q And it arrived in Dakar at what time?

A Approximately 3:30 a.m.

Q That's on the 23rd?

A 25th.

Q On the 25th? You had arrived there --

A I am sorry. The 24th.

THE COURT: The 24th.

Q In the early morning hours of the 24th?

A Right.

Q Now, did you have any communications with any Interpol agents prior to going to Dakar?

A No.

Q Did you ever speak to any Interpol representatives in Dakar?

A No.

Q During the course of the surrounding circumstances, the obtaining of custody by the United States of Mr. Orsine, did you ever discuss these matters with any Interpol agents?

A No.

Q Are you aware of any payments made by the United States by -- payments or promises or things of value given to Interpol or any Senegalese officials?

A No.

Q Where did you go for dinner with Mr. Bocchichio?

MR. De PETRIS: Objection.

THE COURT: Sustained. Don't answer it.

Q Were you and Mr. Bocchichio continuously in each other's presence during the flight from Dakar to Kennedy Airport?

A With the exception of one or the other possibly going to the toilet, yes.

Q And for how long would you say you spoke to Mr. Orsine?

A During the entire flight?

Q Yes.

A Not much more than an hour.

Q How long was the flight?

A The flight was approximately 7, 7-1/2 hours.

Q So you started speaking to him about 15 minutes into the flight; is that correct?

A Yes.

Q Then you spoke to him for about an hour?

A No.

Q For about how long did you speak to him?

A Four or five minutes. Ten minutes, maximum.

Q When did you speak to him again?

A Maybe an hour or so later. Mr. Orsine was intermittantly dozing, sleeping, resting calmly during this period of time. We could not talk to him.

Q Did you -- you didn't give -- besides the -- withdrawn.

Beside the injection given -- withdrawn.

How many injections did Mr. Green give Mr. Orsine?

A One.

Q Did anybody else give Mr. Orsine any injection?

A Not to my knowledge.

Q Which arm was the injection given?

A Right arm.

Q Which arm was the bandaged arm?

A The right arm.

Q Which arm was the handcuffed arm?

A Left.

Q And, of course, you never gave any medical treatment to Mr. Orsine, did you?

A Never.

Q You didn't observe Mr. Bocchichio give any medical treatment to Mr. Orsine, did you?

A Never.

Q There were only you two as representatives of the United States Government who were escorting Mr. Orsine on the aircraft; is that correct?

A Mr. Fields was also aboard the aircraft.

Q You didn't see Mr. Fields administer any medical treatment to Mr. Orsine, did you?

A No.

Q In fact, the three of you never did anything to or for Mr. Orsine except to escort him to the bathroom;

is that correct?

A At his request we obtained two aspirins.

Q When was it that he took the aspirins?

A Two to three hours into the flight.

Q By the way, have you made a record of all that you have -- or most of what you have testified to or some of what you testified to?

A It's been written down, but not typed.

Q And in your own handwriting?

A My own handwriting.

Q Do you have your report with you today?

A No. There are in Paris.

MR. GALLINA: Your Honor, can we have those produced or have an order --

THE COURT: I don't see any reason to. You may continue to question this witness.

MR. GALLINA: Thank you, your Honor.

Q Now, at the airport, do you recall seeing Mr. Orsine's wife?

A Yes.

Q Did you speak to Mr. Orsine's wife?

A No.

Q Do you recall seeing Mr. Orsine's children?

A No.

Q Do you recall seeing Mr. Orsine's brother, Pierre?

A Yes.

Q Did you speak to -- to Pierre Orsine?

A No.

Q Did you see the French Consul there?

A Yes.

Q Did you speak to the French Consul?

A No.

Q Did you hear any of them express any name in your direction or toward your --

A No.

Q Did they make any statements to --

A To my knowledge, no.

Q They didn't seem to be shouting or screaming anything?

A Not in my presence.

Q Did they not try to attempt to get close to Mr. Orsine?

A Not to my knowledge.

Q Did not the French consul attempt to speak to Mr. Orsine?

A No.

Q Did not the French Consul protest the taking of

Mr. Orsine physically as he was being taken aboard the Pan Am plane?

A Not to my knowledge.

Q By the way, where was the Pan Am plane parked with respect to the terminal?

A Pardon me?

Q Where was the Pan Am plane parked with respect to the terminal?

A Directly in front. In the runway.

Q When you boarded -- when Mr. Orsine was put on the aircraft, were the engines operating?

A Normally, yes.

Q Yes. They were on already, were they not?

A Yes.

Q How many passengers were taken off the plane in order to put Mr. Orsine on the plane?

MR. De PETRIS: Objection.

THE COURT: Sustained. Don't answer that question.

(Ask the next question.)

Q How was Dr. Green dressed?

A Casually.

Q When you say casually, please describe it.

A I couldn't possibly describe exactly what he was

wearing. He was wearing -- other than a sport shirt type of shirt, slacks.

Q Shoes?

A Shoes. Of course.

Q Hat?

A I saw no hat. I don't recall seeing any.

Q Did he have any medical bag with him?

A I didn't see any.

Q Where was he seated on the aircraft?

A He was not on the aircraft.

Q Was there any agent seated directly or any agent or official or assistant or any person acting in behalf of or for the United States Government seated directly behind Mr. Orsine?

A No.

Q Did any person behind Mr. Orsine ever inject Mr. Orsine with anything?

A Never.

Q Do you know who the person was that was seated directly behind Mr. Orsine?

A I do not.

Q Did you speak to Dr. Green?

A No.

Q Did you hear Dr. Green speak to anybody?

A Spoke to Mr. Orsine.

Q Will you tell us what happened? What the events were that preceded Dr. Green's arrival.

A From the time Mr. Orsine [illegible]ited the van to the time he was seated?

Q Yes.

THE COURT: One minute.

MR. GALLINA: Yes.

THE COURT: Ask him if he was responsible in any way or knows how Dr. --

How did Dr. Green come to the plane?

THE WITNESS: I have no idea.

Q How long was Mr. Orsine on board the plane before you observed Dr. Green?

A Not much more than 15 minutes.

Q And could you describe where the airport is as respects the City of Dakar?

A It's outside the City of Dakar.

Q About how far would you say?

A Oh, a rough guess, having gone there once or twice, maybe two or three miles.

Q How long a trip was it -- was it by car?

A 10, 15 minutes.

Q In one direction?

A Yes.

Q Did you observe Mr. Orsine attempt at any time to address the French Consul?

A No.

Q Did he ever attempt to call out to his wife?

A No.

Q Did he attempt to call out to anybody, to your knowledge?

A To my knowledge, no.

Q Did you at any time ever gag Mr. Orsine?

A Never.

Q Did you ever observe Mr. Bocchichio to gag Mr. Orsine?

A Never.

Q Did you observe anybody ever attempt to gag Mr. Orsine?

A Never.

Q Did you observe Mr. Orsine basically in your view from the moment --

A Pardon me. I didn't hear you.

Q I will restate it.

Mr. Orsine was in your view continuously from the moment he came out of the van until the time you saw him seated in the aircraft?

A That's correct.

Q And except -- and actually he was in your view from the moment he came out of the van until the time he arrived in Kennedy Airport continuously?

A Absolutely correct.

Q So during all that period of time you never saw anybody gag him; is that correct?

A That's correct.

Q Did Mr. Orsine -- or did you ever remove the bandage on Mr. Orsine's wound to see what it looked like?

A No.

Q Did Mr. Orsine ever remove the bandage to show you what his wound looked like?

A No.

Q Were you able to observe the wound?

A No.

Q Was there anything unusual about the bandage?

A No.

Q You didn't redress the wound, did you?

A No.

Q And Special Agent Bocchichio didn't redress the wound, either, did he?

A No.

Q And you didn't see Mr. Fields dress the wound,

either, did you?

A No. Never.

Q In fact, none of you even touched the wound, did you?

A Never.

Q And none of you touched the bandage or anything like that, did you?

A Never.

Q Were you in communication at times, or were you advised that your office was in communication with the Special Agent in charge of the Buenos Aires office at any time?

A I am sorry?

Q Concerning Mr. Orsine?

A It's confusing.

Q Were you or any person of your office, to your knowledge, in communication with the Special Agents in the Buenos Aires office concerning Mr. Orsine at any time?

MR. De PETRIS: Objection.

THE COURT: Sustained.

MR. De PETRIS: As to any time?

MR. GALLINA: Well, I am talking about --

Q I will ask you that same question surrounding the events and the times in question here.

A This is confusing. From the time of my arrival to the time we landed to -- until the time we took him off?

Q No. Any time from, say, the 25th of July through to the 25th of August, 1975.

A If we had communications with the people in Buenos Aires?

Q Yes. Concerning Mr. Orsine's departure from Buenos Aires.

A That's routine. Yes.

Q And were you aware that he was leaving Buenos Aires and heading toward France? Were you not?

A We were.

Q And were you aware of any electronic surveillance at that time?

A No.

Q Had you been to Dakar prior to this occasion?

THE COURT: What relevancy does that have?

Q During the month of -- that I have just mentioned or the period I have just mentioned?

A No.

MR. GALLINA: May I have a moment with my client, your Honor?

THE COURT: Surely.

(Continued on next page.)

4 :jk

THE COURT: Do you have any more witnesses?

MR. DE PETRIS: One. This witness is in the Eastern District of New York, assigned here.

THE COURT: Is he here?

MR. DE PETRIS: Downstairs.

THE COURT: Do you think he will be a long witness?

MR. DE PETRIS: I don't know. He is an agent.

THE COURT: Maybe we will stay here until midnight.

MR. DE PETRIS: It's Agent Bocchichio.

MR. GALLINA: I have no further questions, your Honor. I make the same request, that the Government make this witness available --

THE COURT: I don't know if he will be available. This man comes from France.

MR. DE PETRIS: He is scheduled to leave.

THE COURT: I see no reason to keep him. This is only a hearing to determine what happened --

MR. GALLINA: I understand, your Honor.

MR. DE PETRIS: I have one question.

REDIRECT EXAMINATION

BY MR. DE PETRIS:

Q Do you recall if Mr. Orsine was ever handcuffed

on both hands?

A One occasion.

Q When was that?

A His being put aboard the aircraft.

Again, he was physically and bodily placed aboard.

Q Who placed the handcuffs on?

A Mr. Bocchichio.

Q Where did this occur?

A On the ramp.

Q The ramp that goes up to the airplane?

A Yes.

Q When were the handcuffs removed from the right wrist?

A After he was seated in his seat.

Q The right wrist was the one with the bandage?

A Yes.

MR. DE PETRIS: I have nothing further.

THE COURT: Anything, Mr. Gallina?

MR. GALLINA: No.

THE COURT: You are excused.

(Witness excused.)

THE COURT: We will take a short recess.

(Recess taken.)

3

Bocchichio-direct

MR. DE PETRIS: The Government calls Special Agent Anthony Bocchichio.

THE COURT: Come up.

A N T H O N Y B O C C H I C H I O , a witness called on behalf of the United States of America, was sworn by the Clerk of the Court and testified as follows:

DIRECT EXAMINATION

BY MR. DE PETRIS:

Q Mr. Bocchichio, by whom are you employed?

A Drug Enforcement Administration.

Q For how long?

A Since July 1973.

Q Prior to that, by whom were you employed?

A The Customs agency service.

Q In what capacity are you presently employed?

A Acting Supervisor of Group 43.

Q Where is that located?

A In the Eastern District of New York.

Q I direct your attention to August 22, 1975, did you have occasion to travel from the United States to Dakar?

A Yes. I left on Thursday, I believe, the 21st.

Q You arrived in Dakar when?

A Friday, the 22nd.

Q Were you traveling with anyone?

A Yes.

Q Who were you traveling with?

A Mr. Lou Fields from the State Department.

Q Now, do you recall approximately when it was that you arrived in Dakar, Senegal?

A About 2:30 in the afternoon of the 22nd.

Q What was your purpose in going to Dakar, Senegal?

A I went there with Mr. Fields because I was familiar with the case and I knew he was bringing a package of extradition papers and I was there to answer any questions with regard to the case because he was unfamiliar with it.

Q When you arrived in Dakar, did you meet with anyone?

A Yes.

Q With whom?

A A gentleman from the Embassy met us at the airplane and took us and we met with the Charge d'Affairs, Mr. Davis.

Q Where did you meet with him?

A The hotel. And from there we proceeded to the Ministry of Foreign Affairs.

Q That would be of the Government of Senegal?

A Yes.

Q What happened when you arrived there?

A They spoke to a gentleman there. I don't recall his name. We were introduced to a gentleman from the Ministry of Foreign Affairs. He had papers. We all left and went to the Ministry of Justice.

Q With whom did you meet there?

A I don't remember the gentleman's name. I remember one gentleman by the name of Ndiaye.

Q What happened at the Ministry of Justice?

A There were conversations between Mr. Davis, the Charge d'Affaires, Mr. Fields, the gentleman from the Ministry of Foreign Affairs, Mr. Ndiaye was present ,and I was present. And they were speaking in French and I didn't understand.

Q Were the extradition papers delivered to the Ministry of Justice?

A Yes.

Q This was on Friday?

A Yes.

Q Would this be late in the afternoon?

A Yes, after four.

Q Did you have any further contact with anyone from the Senegal Government on Friday after you left the Ministry of Justice?

A No.

Q When you left the Ministry of Justice were you with Mr. Fields?

A Yes.

Q Where did you go upon leaving the Ministry of Justice?

A Went back to the Embassy.

Q From there?

A Went to Mr. Allan Davis' home. From there Mr. Davis' chauffeur took us back to our hotel and we went to bed.

Q Directing your attention to Saturday, August 23, 1975, did you have any contact with any representative of the Government of Senegal on that day?

A No.

Q Were you with Mr. Fields all day on Saturday?

A Yes.

Q And Saturday night?

A Yes.

Q I direct your attention to August 24, 1975. Were you with Mr. Fields on that day?

A Yes.

Q Did you have any contact with any representative of the Government of Senegal on that date?

A No.

Q Were you with Mr. Fields on Sunday evening?

A Until 6:00 o'clock. Myself and Agent Collier went to dinner at the Meridian Hotel and Mr. Fields at the Charge d'Affaires' home.

Q Approximately when had Agent Collier arrived?

A He arrived early Sunday morning.

Q That would be the 24th?

A Right.

Q Now, directing your attention to the 25th of August, did you have occasion to see Dominique Orsine on that day?

A Yes.

Q Was that the first time you had seen him since you arrived in Dakar, Senegal?

A Yes.

Q Do you recall where you saw him?

A I saw him on the airfield at the gangway to the aircraft.

Q Would you relate to the Court what occurred upon your first seeing Mr. Orsine?

A Well, the police van pulled up. The doors opened in the back of the van and Senegali police came out and Mr. Orsine jumped out and he was struggling with the

police. It must have been five or six of them. He was struggling and screaming all the way up the gangway to the aircraft.

Q Did anything occur on the gangway?

A Yes, I put handcuffs on him.

Q Did anything occur when you put the handcuffs on him?

A I put one handcuff because he was swinging his arm. I put one handcuff on one wrist and he pulled that out of my hand and hit one of the Senegalese in the head with it. Then I put it around his other wrist which was bandaged, I put it in the first clip because I didn't want to tighten it.

Q What happened after you handcuffed Mr. Orsine?

A The Senegalese carried him.

Q What happened on arrival in the aircraft itself?

A They went in and I went in and when I got in he was in the aisle getting into the seat. He was yelling and all I could understand of what he was saying was "Million."

He sat down at the seat and then I got in on one side. Agent Collier got on the aisle side and the Senegalese stood a few minutes and left.

Q From the time that you first saw Mr. Orsine until the time that the Senegalese police left the aircraft,

did you ever see any of those individuals strike or hit Orsine in any way?

A No.

Q Did you ever hit Mr. Orsine?

A No.

Q Did Agent Collier ever hit Mr. Orsine?

A No.

Q Did you ever see anyone hit Mr. Orsine in Dakar, Senegal?

A No.

Q Did you ever pay any representative of the Government of Senegal, either a police officer or any type of representative of the Government of Senegal, any money in connection with the matter of Dominique Orsine?

A No.

Q To your knowledge, had any money ever been paid to anybody in Senegal in connection with the extradition or expulsion of Dominique Orsine?

A No.

Q Did there come a time after the Senegalese police left the aircraft that another individual came to the place where you and Mr. Orsine and Agent Collier were?

A Yes.

Q Do you know who?

A A Peace Corps doctor.

Q What happened when he came?

A He gave Mr. Orsine an injection.

Q After the injection was given to Mr. Orsine, shortly thereafter did the plane leave Dakar?

A Right after the doctor left, a couple of minutes. A short while.

Q During the time that you, Mr. Orsine, and Agent Collier were seated in the aircraft, after the plane left the area of the terminal, did you hear Agent Collier have any conversation with Mr. Orsine?

A Yes.

Q In what language was that conversation, if you know?

A French.

Q Did you understand any of the conversation?

A No.

Q During the course of the flight did you have occasion to observe any part of Mr. Orsine's body?

A Yes.

Q Do you recall when that was?

A We allowed him to change his shirt and hour or so before we landed.

Q Did he also shave at that time?

A Yes.

Q Did you observe any bruises of any kind on the front portion of his chest or stomach or back?

A No.

MR. DE PETRIS: I have no further questions.

MR. GALLINA: One moment, your Honor. The Interpreter can't keep up.

THE COURT: Surely.

(Pause.)

THE COURT: Mr. Gallina, I am going to adjourn the cross-examination until Wednesday, at 10:00 A.M. We will conclude for the day and you can come back Wednesday at 10:00 A.M. for the cross-examination.

MR. DE PETRIS: When?

THE COURT: Wednesday, 10:00 A.M.

MR. GALLINA: Monday, I expected to be on the hearing.

THE COURT: I am on trial with a jury case which is on for Monday. It may take Monday and Tuesday.

MR. GALLINA: I expect to go away Wednesday.

THE COURT: You want to put it off?

MR. GALLINA: Yes.

MR. CUTLER: How about the 3rd of December?

THE COURT: December 3rd would be all right. It's a Wednesday.

(Recess taken until December 3, 1975 at 10:00 A.M.)

* * *

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FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D. N.Y.
JAN 16 1976
TIME A.M.
P.M.

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

-against-

DOMINIQUE ORSINE,

Defendant.

74-CR-492

United States Courthouse
Brooklyn, New York

December 3, 1975
10:00 o'clock A.M.

B e fo r e :

HONORABLE HENRY BRAMWELL, U.S.D.J.

I hereby certify that the foregoing is a true and correct transcript of my stenographic notes.

FRANCES KARR
ACTING OFFICIAL COURT REPORTER

6

Appearances:

DAVID G. TRAGER, ESQ.
United States Attorney
for the Eastern District of New York

BY: DAVID DE PETRIS, ESQ.
Assistant U.S. Attorney

GINO GALLINA, ESQ.
Attorney for Defendant

THE CLERK: United States of America v. Dominique Orsine.

MR. GALLINA: Good morning, your Honor. I have a document here that should have been attached to my original motion for the taking of depositions. It is a signed statement by Mr. Orsine which I could not have signed by him until I had it properly interpreted and translated.

THE COURT: Do you want it filed?

MR. GALLINA: Yes, if it could be attached to the original motion.

THE CLERK: Judge, there is no interpreter here for Mr. Orsine.

THE COURT: Where is your interpreter?

MR. GALLINA: I hired an interpreter last night. My office did. I do not see the interpreter here.

THE COURT: What do we do?

MR. GALLINA: I would waive for Mr. rsine for these proceedings. This is a matter having to do with the subpoenas at this point.

THE COURT: I see.

MR. GALLINA: As I indicated to your Honor, to your office, rather, rather than cause any expense to the Government or to anybody that I might subpoena

and bring the items to the Court or have to go through the world to gather items together, these items may not be available to me by subpoena or persons might not be and I will submit them to the Court ahead of time.

THE COURT: Who is it you wish to subpoena?

MR. GALLINA: I wish to subpoena these individuals. I might as well present them to the Court.

THE COURT: Tell me.

MR. GALLINA: I have Mrs. Eleanor Fisher, Assistant Secretary of the Pan American Airlines to appear with certain documents concerning all books and records pertaining to any Pan American employees present at the Senegal Airport on August 25, 1975, including any reports, notes, etc., concerning flight No. 189 and/or Dominique Orsino.

THE COURT: That is when he was leaving?

MR. GALLINA: That is right, your Honor.

My second subpoena is for Mr. Steven Makavikas, Air France.

THE COURT: That is the plane on which he arrived?

MR. GALLINA: Flight 96.

THE COURT: He walked off the plane and you want to bring somebody in on that?

MR. GALLINA: No, I want the records, your Honor. I am asking for books and records pertaining to flight No. 96.

THE COURT: That is denied.

MR. GALLINA: I would think, your Honor, I would be able to show that the United States Government was in control of this whole operation from the beginning.

THE COURT: What you are going to have to do with a lot of these things that you are presenting to the Court is make a credible showing of why you are entitled to it and I do not think you have made a credible showing of why that information is either necessary or you may be entitled to it for purposes of this hearing and you are going to have to do that with every individual that you want.

MR. GALLINA: I can understand that, your Honor.

THE COURT: I think I have some idea of what you want. If you want the Captain of the Pan Am plane on which he left that is the only person I think as of now there is any reason or any real showing you have made that this person is one you are entitled to have for purposes of this hearing.

MR. GALLINA: I understand.

THE COURT: I do not think there is anybody else

and anything you wish to do you are going to have to make a credible showing of a basis upon which it should be done. I am not going to permit you to use this hearing for a fishing expedition and that is what you have in mind proceeding as you are. You may shake your head but I am telling you what you are doing.

MR. GALLINA: Your Honor, I do not believe that the approach that I am using, these means and these methods, is a fishing expedition, but is valid.

THE COURT: It is because in no way are you showing the Court anything which is any basis for showing that you are entitled to it.

MR. GALLINA: Your Honor, the motive might be evidence if it was material that had anything to do with the crime at issue. The substance of the crime, I am not looking for any material concerning the substance of the crime.

THE COURT: That is why I am not going to permit you to do it, the way you are asking, definitely not.

MR. GALLINA: Therefore, I would have no motive for using a fishing expedition.

THE COURT: I will not permit it. If you want the Captain of the Pan Am plane he left on from Africa I will permit you to bring that in if you subpoena him.

MR. GALLINA: There are books and records I am

looking for. These are subpoenas duces tecum.

THE COURT: I am not going to permit it. It is as simple as that, Mr. Gallina. I am not going to permit it because it is in the nature of a fishing expedition and you have made no showing as a basis for the application you make.

MR. GALLINA: How am I or how is this defendant in any way in the world going to show his case if he cannot even get to look at documents?

THE COURT: This is not his case and you yourself admit it. It has nothing to do with it. You yourself admit it.

MR. GALLINA: I do not understand that.

THE COURT: This is not his case. It is a question of whether or not his rights were violated when he was put on that plane in Africa, that is all there is to it. You have made no showing in any way to give the Court a basis for saying that these records and all these things should be brought.

MR. GALLINA: Let me presume, your Honor, the records of the aircraft itself show that everything that the witnesses have testified to so far is not true, let us presume that, that they show there was a person aboard.

THE COURT: I am not going to presume that or

make any such presumption unless you make a showing which in some way shows to the Court that such happens to be the fact and for that burden it is your responsibility. This hearing was brought at your instance and no one else.

MR. GALLINA: We have, your Honor, so far.

THE COURT: No, you have not.

MR. GALLINA: In the affidavit submitted to the Court.

THE COURT: You have not, Mr. Gallina, and that is all there is to it. If you want me to sign or if you want a subpoena issued for the Captain of that Pan Am plane that is as much as I feel you are entitled to as of now.

MR. GALLINA: I do not even know who the Captain is, your Honor.

THE COURT: Well, you are the one that wants it.

MR. GALLINA: I cannot find it out without subpoenaing the records. How can I discover who the Captain of the plane is without subpoenaing the records? I am locked in. I cannot find out anything.

THE COURT: I will issue a subpoena for that specific purpose only.

MR. GALLINA: Am I to name his name "John Doe" until I find out who was working on the plane and who

the crew members were?

THE COURT: You know everything else but the name of the Captain. You know the flight number and it left Dakar, Africa, you know Senegal, you know the date. Make out a subpoena for that particular individual and I will have him here for you, if you can get him here.

MR. GALLINA: All right.

Your Honor has granted the first subpoena concerning the Pan Am Airlines. I am not certain if I understand that. My first application was for a subpoena duces tecum for the books and records pertaining to the Pan Am employees present in the Dakar, Senegal airport, August 25, 1975 including any reports, notes, concerning Flight No. 189 and/or Dominique Orsine.

THE COURT: That will give you what you want. That subpoena you will get.

MR. GALLINA: Then the second subpoena as to the Air France, similar documents on Air France.

THE COURT: Denied. Mr. Orsine walked off the Air France airplane and he got out there.

MR. GALLINA: Your Honor, I have also a subpoena for Eleanor Fisher, the Assistant Secretary of Pan Am Airlines for all books and records concerning

Pan Am Flight 189 originating in Nairobi and landing in Dakar, Senegal the 25th day of August, 1975, including copies of any logs or other reports showing time of arrival and departure in Dakar and identifying by name all members of the flight crew and any comments and notes relating to any matters aboard said plane during said flight concerning passenger Dominique Orsine, Drug Enforcement Administration agents, James Collier, Anthony Bocchichio and Louis Field or Dr. Albert Green and copies of any tickets for any of the above persons.

THE COURT: Application denied.

MR. GALLINA: I have also a subpoena to the United States State Department for copies of all letters, telegrams, cables, records, communications, vouchers, disbursement records, etc., concerning efforts to obtain custody of Dominique Orsine by extradition, expulsion or other means from Argentina, Senegal, or France in 1975.

THE COURT: You have not made a credible showing. Application denied.

MR. GALLINA: Your Honor, I will submit to the Court a memorandum together with necessary affidavit to support my application.

THE COURT: You will have to make a credible

showing before the Court will consider the relief you seek.

MR. GALLINA: I can understand your Honor's position.

THE COURT: Without that, all these applications will be denied except for that first one that I granted which is before me.

MR. GALLINA: Your Honor, I have a similar application to the Central Ingelligence Agency for copies of any and all letters, telegrams, cables and records and communication vouchers, disbursement records, etc., concerning efforts to obtain custody of Dominique Orsine by extradition, expulsion or other means from Argentina, Senegal, France, 1975.

THE COURT: Application denied. No credible showing by the defendant's attorney.

MR. GALLINA: I also have a subpoena to the Drug Enforcement Administration similar to the one previously stated.

THE COURT: No credible showing; application denied.

MR. GALLINA: I have one also to the Federal Bureau of Investigation.

THE COURT: No credible showing; application denied.

MR. GALLINA: I also have a subpoena to Steven Makavikas of Air France for all books, records pertaining to Flight No. 96 originating in Buenos Aires, Argentina, including copies of any logs or other records showing time of arrival and departure in Buenoes Aires and Dakar, identifying by name all members of the flight crew and any comments on or notes relating to any matters aboard said plan and/or during said flight concerning Passenger Dominique Orsine and Drug Enforcement Agent Rhyn Tryal.

THE COURT: No credible showing; application denied.

MR. GALLINA: Your Honor, I have personal subpoenas for Dr. Albert Green.

THE COURT: No credible showing; application denied.

MR. GALLINA: I have a personal subpoena for Mr. Alan Davis, Charge d'Affaires.

THE COURT: No credible showing; application denied.

MR. GALLINA: And for Mr. Bamburg, who was also present both at the airport and subsequently at the airport when the Pan Am plane took off.

THE COURT: In addition to which, I might say, counsel, it is your intention to go to Africa to depose

other people. Why can't you go there and depose these at the same time?

MR. GALLINA: I can and I was going to suggest that.

THE COURT: You did not suggest it yet.

MR. GALLINA: I have suggested that all along, your Honor.

THE COURT: Is that what you want to do?

MR. GALLINA: I will do that. That is correct, your Honor.

THE COURT: If you can depose them when you are there then you can do it that way.

MR. GALLINA: I will be very happy to do it that way.

THE COURT: As far as those subpoenas are concerned they are all denied.

MR. GALLINA: Then I will attempt to depose them there.

I also have subpoenas for Mr. Patti of the U.S. Embassy and for the various conferences with the Foreign Ministry and Ministry of Justice employees.

THE COURT: Application denied.

Is there anything further?

MR. GALLINA: I will, your Honor, submit to the Court a memorandum as to each one of these applications

and ask your Honor permission.

THE COURT: You are going to Africa to depose your own witnesses. You might as well depose these when you are there.

MR. GALLINA: I agree with you.

THE COURT: You have not made a credible showing for bringing any of these people here.

MR. GALLINA: I will, your Honor.

THE COURT: Other than the Captain of the Pan Am plane that he took off on.

MR. GALLINA: I would be very happy to depose them in Dakar if he happens to stop in Dakar unless he stops in New York, of course.

THE COURT: You had better make applications on the depositions you want to take.

MR. GALLINA: I will, your Honor. I will add that to the record and I will attach it to the affidavit in support.

THE COURT: Anything further?

MR. GALLINA: No, your Honor.

THE COURT: What type of adjournment would you want on this?

MR. GALLINA: Your Honor, I would like to have an adjournment until after the holidays.

THE COURT: What date would you suggest?

MR. GALLINA: I have a scheduled trial on January 5 before Judge Weinstein which will take approximately a week and a half.

THE COURT: As far as this hearing is concerned do you have any other witnesses?

MR. DE PETRIS: Agent Bocchichio was on the witness stand and we completed his direct. We did not start his cross-examination.

THE COURT: Well, I am on trial with another case. I will not be able to take him this morning.

MR. DE PETRIS: Agent Bocchichio is assigned to the Eastern District of New York, he is here.

THE COURT: When would you want to put this down?

MR. GALLINA: Any time convenient to the Court, your Honor.

THE COURT: Do you want to put him on this month or next month?

MR. GALLINA: Well, let us put it all together, your Honor.

THE COURT: Do you want to put it down next month?

MR. GALLINA: Yes, your Honor.

THE COURT: What date would you suggest next month?

MR. GALLINA: January 15 is the date we both consent to, your Honor.

THE COURT: Thursday, January 15.

Anything else, Mr. Gallina?

MR. GALLINA: Nothing, your Honor.

THE COURT: Always nice to see you.

January 15 at 10:00 A.M.

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S. DISTRICT COURT E.D. N.Y.
JAN 2 1976
TIME A.M.
P.M.

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, :

-against- :

DOMINIQUE ORSINE, :

Defendant. :

----------x

74-CR-492

United States Courthouse
Brooklyn, New York

January 15, 1976
10:00 o'clock A.M.

B e f o r e :

HONORABLE HENRY BRAMWELL, U.S.D.J.

MICHAEL PICOZZI
OFFICIAL COURT REPORTER

Appearances:

DAVID G. TRAGER, ESQ.
United States Attorney
for the Eastern District of New York

BY: DAVID DE PETRIS, ESQ.
Assistant United States Attorney

GINO GALLINA, ESQ.
MURRAY CUTLER, ESQ.
JOEL BRENNER, ESQ.
LUCIEN HENRISEY, ESQ.
Attorneys for Defendant

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MR. GALLINA: Your Honor, I have an attorney by the name of Lucien Henrisey from Paris. He knows the defendant's brother and although he is not retained to represent the defendant his brother of course is interested in his brother's welfare and he is here on other business in addition to assisting me in any way he can by giving me information conerning Customs and the laws.

I would deem it a pleasure if your Honor would allow me to introduce him to the Court.

THE COURT: Surely.

MR. GALLINA: It is my pleasure to introduce Lucien Henrisey who is a member of the bar in France.

Could you translate that?

MR. HENRISEY: (through interpreter) I am delighted to know your Honor and I am very pleased to come here.

THE COURT: The Court is pleased that he came and we are happy he is here and we hope is stay is fruitful while he is here.

MR. HENRISEY: (through interpreter) I thank you very much, your Honor.

THE COURT: Thank you.

Are we ready, Mr. Gallina?

MR. GALLINA: Yes.

G E O R G E G G R E C O , a French interpreter was sworn by the Clerk of the Court at this time.

THE COURT: Call the case.

THE CLERK: The United States of America against Dominique Orsine.

MR. GALLINA: Good morning, your Honor.

THE COURT: Bring the defendant up with the interpreter, please.

THE COURT: Give your name.

THE INTERPRETER: George Greco, 305 East 24th Street, Manhattan, zip code 10010.

MR. GALLINA: Thank you, your Honor. They can sit down.

THE COURT: All right, let them sit down.

MR. GALLINA: Your Honor, I was wondering if we could put aside some housekeeping matters before my mind is beclouded by the witness's testimony.

I presume that Mr. De Petris will be able to leave for the desposition any time soon now.

MR. DE PETRIS: Yes, if the Court so orders.

THE COURT: If that is the position, the Court will permit it, and Mr. De Petris can leave for whatever depositions are to be taken.

MR. DE PETRIS: Your Honor is aware,of course, the Government's position on the deposition --

THE COURT: Repeat it for me.

MR. DE PETRIS: The Government opposes the depositions on the grounds there is no purpose shown for the depositions.

MR. GALLINA: I thought your Honor ordered them.

THE COURT: No, I suggested to you that you should make a written application to the Court.

MR. GALLINA: For the subpoenas, your Honor. That was for the subpoenas. That wasn't for the depositions, your Honor. I believe you can see it in the minutes.

THE COURT: Read them. Time has passed and I am not clear on it.

MR. DE PETRIS: It's been quite a while, your Honor.

THE COURT: Yes.

THE CLERK: November 21st, your Honor.

MR. GALLINA: On page -- we were speaking about additional people at the time on the 3rd of December, and on page 12 the Court says:

"THE COURT: In addition to which, I might say, counsel, it is your intention to go to Africa to depose other people. Why can't you go there and depose these at the same time?

"MR. GALLINA: I can and I was going to suggest

that.

"THE COURT: You did not suggest it yet."

And then it goes on, et cetera, et cetera.

And then:

"THE COURT: If you can depose them when you are there then you can do it that way.

"MR. GALLINA: I will be happy to do it that way.

"THE COURT: As far as those subpoenas are concerned they are all denied.

"MR. GALLINA: Then I will attempt to depose them there."

And then we went on further talking about subpoenas.

And then, your Honor, on page 14 your Honor states:

"THE COURT: You are going to Africa to depose your own witnesses. You might as well depose these when you are there."

THE COURT: That was in light of your intention of going there.

What do you say I ordered?

MR. GALLINA: I presumed --

THE COURT: That was just colloquy between us.

MR. GALLINA: I said I will submit a memorandum

on each of the conditions and ask your Honor's permission and your Honor said: you are going to Africa to depose your own witnesses, you might as well depose them.

In other words, your Honor denied me the subpoena and said I should depose them.

THE COURT: Where did I order you can go to Africa to take deposition? I amsure I didn't do that.

MR. GALLINA: Your Honor --

THE COURT: You said you were going there. Where did I order this to be done?

MR.BRENNER: We had made a formal motion to do that. I believed -- at least when your Honor denied the subpoenas and said, "When you go to Africa -- "

THE COURT: It was my recollection that I stated that you should bring on a proceeding in writing for the depositions you wished to take.

MR. GALLINA: That was for the subpoenas.

MR. BRENNER: The depositions we moved for two or three months ago.

THE COURT: Did I order them at that time?

MR. BRENNER: I thought that was your Honor's ruling on the depositions.

MR. GALLINA: I did also.

THE COURT: Mr. De Petris, maybe you remember.

MR. DE PETRIS: I don't believe your Honor actually came out and ordered it.

THE COURT: I didn't.

MR. BRENNER: It wasn't a formal written order.

MR. DE PETRIS: I believe that originally your Honor had indicated that in order for depositions to be taken there would have to be a showing of what specific individuals Mr. Gallina was talking about.

THE COURT: This you will have to do because I can't say go over and take depositions --

MR. DE PETRIS: I believe your Honor indicated, or at least it was the Government's position, before depositions should be ordered there should be some type of showing that the testimony to be given by this particular individual would have some materiality to the issues.

THE COURT: And that it was necessary.

MR. GALLINA: If your Honor wants me to do that, I can do that quickly.

THE COURT: I just can't --

MR. BRENNER: We stated in the moving papers who we would like to depose and what testimony we expected to get.

THE COURT: Is that a copy (indicating)?

MR.GALLINA: Since that date quite a few more

witnesses have come to our attention.

THE COURT: I think in order to clarify it rather than to go on on what was done on this motion I think you should move again and put in any additional people and put it before the Court as soon as possible.

MR. GALLINA: I will do that.

THE COURT: Are there additional people?

MR. GALLINA: Yes.

MR. BRENNER: We had specified in there that there was going to be additional people.

THE COURT: I can't make a decision on a specification which is not definitive.

MR. BRENNER: Would it be sufficient to merely give the names?

THE COURT: No, it wouldn't be sufficient, and please do it right.

MR. GALLINA: We will do it. You want the rationalization, the materiality --

THE COURT: And the reason, because I just can't say to Mr. De Petris get on a plane and go with Mr. Gallina and watch him.

MR. GALLINA: I fully agree with your Honor.

THE COURT: No question. You have to set this thing out, and in your motion I would address yourself to those that you already set forth and to those

additional mmes.

MR. GALLINA: We will.

THE COURT: If you want to bring in on by order to show cause, that is up to you.

MR. GALLINA: I will just submit motion papers as an addendum to this.

THE COURT: We can't proceed in this fashion without more specifics as to that.

MR. GALLINA: The additional witnesses?

THE COURT: Not only the additional witnesses, the materiality of each witness and the basis on which a deposition of this witness is required. It must be in that fashion. It must be.

MR. GALLINA: I don't believe your Honor wishes me to fully disclose the defendant's --

THE COURT: The Court evidently did not make any opinion or ruling as to the notice of motion of November 19, 1975, which Mr. Gallina made, but in view of the fact that there are additional parties he wishes to depose, I would feel that this motion should be renewed before the Court with the additional parties.

MR. GALLINA: I could.

THE COURT: That should be done.

MR. GALLINA: I could do it as an addendum to

the motion.

THE COURT: And the Court will proceed expeditiously because this thing has been dragging.

MR. GALLINA: Your Honor, there is another idea in my mind which I already discussed with Mr. De Petris. Apparently, the Government's case here is one in which they allege that there were certain meetings between my client and other co-conspirators outside the United States.

I don't believe the Government alleged that the defendant Orsine ever committed any acts within the confines of the United States or its territory. He was not himself present --

MR. DE PETRIS: When?

MR. GALLINA: At any time you are going to allege any overt act.

MR. DE PETRIS: He was not present during the period of time alleged in the indictment. However, the Government will attempt to introduce prior similar acts which will include his presence in the United States.

MR. GALLINA: I am just finding out about that day for the first time. But it was my understanding that there were other acts besides those outlined as overt acts in the first count of the conspiracy which

occurred outside the United States insofar as either conspiratorial conversations or conspiratorial acts are concerned.

One of the reasons the compact between the various countries of the world did not provide for extradition for persons who have not been present in the demanding state during the time the crime was allegedly committed, the real rationale for that is because that person if brought to a demanding state is asked to defend himself in a state in which all the witnesses and occurrences occurred outside of that state.

Now, we allege here that we can probably show, because of certain geographical factors, that the defendant Orsine could not possibly have been anywhere near the site or scene of any of these alleged conspiratorial --

THE COURT: Well, that is a defense. How do you wish to raise it?

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MR. GALLINA: In essence, as an alibi. I know from my investigation that Mr. Orsine was in certain places at certain times in Argentina.

THE COURT: Under the new rules, aren't there certain directions as to the raising of an alibi?

MR. GALLINA: That is correct. I can't raise an alibi until I know when it was approximately, the time and date and where it is, that my client is alleged to have committed certain acts. Therefore I am asking your Honor now to order that the Government reveal to the defendant the time and places that he allegedly committed any type of overt acts which the Government intends to rely on in either its direct or rebuttal cases.

This would enable us to go forward with our defense for alibi.

THE COURT: Isn't there a procedure provided in the new code for you to raise this in writing? I would think so.

MR. GALLINA: I believe in this district, I believe it's Rule 3, that we can do this informally as discovery.

THE COURT: Go ahead.

MR. GALLINA: Especially if your Honor so orders it. I only raise it now because Mr. De Petris

refused to give it to me informally at my previous request.

THE COURT: The case is an involved case and rather than make decisions off the bench I would rather that you raise these either in discovery motions or whatever motions you may seek to bring because in that way we get some more orderly approach and we get a better result rather than raising issues this way.

MR. GALLINA: Your Honor, besides the fact prior to my coming into the case the discovery motion had been made and I am not sure what the order is -- I am not sure whether there has been an order insofar as that motion by Mr. Cutler --

THE COURT: I believe so.

MR. GALLINA: My point of raising all this is if that is the case, that your Honor does order the discovery of the alleged times and places, as a matter of fair play the defendant can defend himself.

THE COURT: He should be entitled to it.

MR. GALLINA: These very witnesses we believe are priests, mayors of towns, doctors, et cetera, very reputable people who can also be deposed in Argentina at the same time that we depose people in France thereby saving cost and expense to the defendant.

THE COURT: What do you want the Court to do

as to this procedure?

MR. GALLINA: It is my wish that we recess this proceeding. I will submit to your Honor an addendum to the motion for deposition for the purpose of this hearing. I will also submit to your Honor a detailed letter requesting discovery of these certain overt acts --

THE COURT: If it is a letter requesting discovery, that should go to the United States Attorney.

MR. GALLINA: Yes.

MR. DE PETRIS: The informal discovery under Rule 3 is --

THE COURT: You can send the Court a copy if you wish.

MR. GALLINA: I would also include in my addendum to the motion these witnesses to be deposed once I am given the information as to the dates and time. So I then have an opportunity to speak to my client.

THE COURT: Are you saying you have to get the discovery before you can have the additional parties to put into the motion?

MR. GALLINA: Of course.

THE COURT: On the continuance, what would you have in mind? What type of continuance?

MR. GALLINA: I would suggest -- depending upon my being able to correspond between here and Argentina, at least a week and a half to two weeks. Two weeks would be safe.

MR. DE PETRIS: If I can just get a clarification of a couple of items?

THE COURT: Yes, Mr. De Petris.

MR. DE PETRIS: Mr. Gallina in his original motion papers on the questions of depositions being taken has indicated when he specifically name individuals that they happened to be present, I believe with respect to some of them at the --

THE COURT: I would say Mr. De Petris, I would like the United States to address itself specifically to this motion in writing.

MR. DE PETRIS: I will.

THE COURT: Go ahead, I'm sorry to interrupt you.

MR. DE PETRIS: And the fact that these individuals may have been present when Mr. Orsine was brought to the airport, in the Government's mind it would not necessarily mean any testimony of these individuals might give would be relevant and material.

THE COURT: I tend to agree with that, but Mr. Gallina doesn't.

MR. GALLINA: If the Government witnesses' testimony concerning the events of the airport is relevant, why isn't the defendant's testimony concerning the events relevant?

THE COURT: That probably is why it would be an order for the depositions to be taken.

MR. DE PETRIS: With respect to the new individuals that are going to be named, I would assume that when the names of these individuals are provided it will not be merely an assumption as to what these individuals may possibly testify to because we could be deposing 50 or 100 people who are totally unnecessary.

MR. GALLINA: I don't think your Honorwould allow me to be unreasonable. I will try not to be.

MR. DE PETRIS: The other thing that causes some concern is what Mr. Gallina is apparently asking for with respect to the trial itself is that all of the defense or many of the defense witnesses, if there are any, be deposed in foreign countries rather than bringing them up here by the defendant and subjecting them to cross-examination and the consequences of perjury if they commit perjury in the United States.

THE COURT: That may be his position.

MR. GALLINA: Your Honor, they are unavailable

to the defendant, otherwise --

THE COURT: Some of them I think he stated don't want to come to the United States.

MR. GALLINA: That is correct. That is correct, your Honor, for more than one reason. There are other individuals who do not have the time.

THE COURT: You want to have a continuance for two weeks?

MR. GALLINA: If I am going to put that together also -- in other words, if we are going to send a letter to the Government and ask for discovery and before I am able to put together the necessary witnesses and rationalization and materiality of the witnesses, and present it to the Court, I would say I need at least three weeks.

MR. DE PETRIS: It would take me one day to respond to Mr. Gallina's request.

THE COURT: Three weeks would be February 5th.

MR. GALLINA: Fine.

MR. DE PETRIS: This case is dragging on.

MR. CUTLER: If I can get a word in, on October 10th, your Honor, that is three and a half months ago, the notice of demand was served upon the Government in which everything that your Honor insinuated about discovery was requested specifically.

United States.

Q Now, during the interim, that is August 7th and the date that he left Dakar, Senegal, you had no contact with Dominique Orsini; is that correct?

A I had no contact with him, whatsoever, and did not even know the capacity of time he was being held.

Q To your knowledge, did any other member of the Embassy have any contact with Mr. Orsini during this interim period?

A I know of no contact with any member of the American Embassy within that period, and do not believe anyone saw him.

Q You were in charge of the American Embassy at Dakar during this period of time?

A Yes. I was in charge.

Q Were any monies paid by the United States to the Government of Senegal in connection with the extradition or expulsion of Dominique Orsini to the United States?

A No money to my knowledge was paid to anyone in connection with the expulsion of Dominique Orsini or the extradition of Dominique Orsini to the United States by the American Government.

Q Did there come a time when Special Agent Bocchichio and Louis Fields arrived in Dakar, Senegal,

from the United States?

A Yes. On the date of 21st of August, I was informed that the Senegalese Government wished to have documentation which might pertain to the extradition of Dominique Orsini to the United States. I informed the United States Department of State that these documents were required. I was informed that they were being sent to Dakar by Diplomatic Pouch.

In turn, I informed the Department of State that there was some urgency, and the documentation should be brought rather than sent to Dakar, and preferably by someone from the Department of State with legal experience, and that they should be accompanied, whoever came, by someone who might take custody of Mr. Orsini, were he delivered to us.

Q And after you received this communication, Mr. Fields and Special Agent Bocchichio arrived in Dakar; is that correct?

A They arrived in Dakar on the 22nd of August of last year, 1975.

Q Now, upon arriving in Dakar, did they meet with yourself?

A They were met by an officer of the embassy at the airport, who took them directly to the Hotel Daranka, and as soon as they arrived at the hotel I went to the hotel and

met with them.

Q And what happened after you met with them?

A We went directly from the Hotel Daranka about a block and a half to the Ministry of Foreign Affairs of Senegal.

Q What happened at the Ministry?

A We met with the technical consul who informed us that there was some urgency in our going directly to the Ministry of Justice of the Government of Senegal.

Q And did you thereafter go to the Ministry of Justice?

A We did. After a very brief delay of perhaps twenty minutes in the Ministry of Foreign Affairs and the Ministry of Justice we met with the person in charge, a Mr. Mbacke.

Q What happened at your meeting with Mr. Mbacke?

A In this meeting, we again requested orally that Dominique Orsini be delivered to United States custody. There was a meeting, I suppose, of about twenty minutes' duration. We were informed that we also delivered the package of documents which had been brought to United States by Mr. Fields who had been accompanied by Agent Bocchichio.

Q What happened after your meeting with

Mr. Mbacke?

Let me ask you this: Were you told during your meeting with Mr. Mbacke whether or not Mr. Orsini would be delivered?

A We were not informed during that meeting that Mr. Orsini would be delivered to the United States custody. We were told that the sovereign workings of the Senegalese Government would have to provide -- would have to take their own course, and that the Acting Minister of the Ministry of Justice, Mr. Mbacke would be back in touch with us after there had been a court proceeding which would take place on the morning of the 22nd of August.

Q On the morning of the 22nd or the 23rd?

A I am sorry. On the morning of the 23rd of August.

This meeting took place -- the meeting that I just described took place on the 22nd of August. It would be the following morning which would be the 23rd.

Q What happened after the meeting with Mr. Mbacke?

A After the meeting with Mr. Mbacke we returned to the Embassy, the office building of the Chancellery where we prepared reports to inform the Department of State what had taken place.

Q And when was the next time you received any

word or contact from the Senegalese Government?

A At mid-morning on August 23rd I was telephoned by a representative of the judiciary police, Mr. Sadibou Ndiaye.

Q Could you please spell that for the Court Reporter?

A S-a-d-i-b-o-u N-d-i-a-y-e.

Q Now, prior to receiving the telephone communication, had tickets been purchase for a flightfrom Dakar to the United States?

A Yes. There are three Pan American flights from Dakar to the United States each week, and we knew the next one to be on Monday morning, the 25th of August.

Q Now, when reservations were made for the next flight which would have been on August 25th and the tickets were purchased, were you aware at that time as to whether or not Mr. Orsini would be delivered to you?

A No. We were not certain that he would be, but since the flights from Dakar to the United States are frequently either full or in some cases oversold, we believed it to be judicious to purchase tickets then, in addition. The ticket office closes on Saturday at noon, and does not open until Monday morning.

Q So tickets were purchased some time during the

morning of August 21st, and you subsequently received a call from Mr. Ndiaye. What, if anything, occurred?

A After my conversation with Mr. Ndiaye, in which he asked me whether the Embassy could take custody of Mr. Orsini immediately, I replied that we did not wish to do this. If there was any way in which he could see that the Senegalese Government retained custody of Mr. Orsini until the flight on Monday morning, we much preferred it. If that were not possible, we would try to make arrangements to receive him earlier.

He said he would call me again later.

Q And did you subsequently receive a phone call from Mr. Ndiaye?

A At approximately one o'clock on August 23rd, one o'clock in the afternoon, I received another call from Mr. Ndiaye, during which at the telephone call he informed us that Mr. Orsini would be retained in Senegalese custody until time for the flight to depart on Monday morning, August 25th.

Q Now, what, if anything, happened next with respect to Mr. Orsini, as far as the American Embassy in Dakar was concerned? Did you have any contact with the Senegalese Government on Sunday, August 24th?

A I had no contact whatsoever, and I believe

that no other member of the Embassy had any contact with the Senegalese authorities until flight time on Monday morning, August 25th.

Q And would you relate to the Court, as best you can, what occurred in the early morning hours of August 25, 1975?

A At approximately 3:30 in the morning on August 25th, I, myself, went to the airport accompanied by two house guests who had come to Dakar from another African post, and who had nothing to do whatsoever with this episode.

Q Were they scheduled to leave Dakar on that day?

A On that flight, yes. It was the wife of the American Ambassador to Chanoine, Guinea and her son who had arrived earlier on that Sunday, the 24th of August, and who had dinner at my house.

After we had finished dinner, we rested, and we were joined at about three o'clock by Mr. Fields -- I am sorry, Mr. Fields had had dinner with us as well, and we went back to his hotel, as I recallit, to get his baggage, and he arrived at the house, I would estimate, at around 2:45 or 3:00 o'clock accompanied by Agent Bocchichio and Agent Collier who had come from Paris.

Q Do you know when Agent Collier arrived from Paris?

A He arrived on Sunday the 25th. -- Sunday, the 24th of August.

Q What happened after Mr. Fields, Agent Bocchichio and Agent Collier arrived at your house?

A We went in two automobiles to the airport, my two guests and I in one car, and Mr. Fields and the two agents in another car, arriving at the airport at about 3:30 on the morning of Monday, August 25th.

Q What happened next?

A We waited in the outer entrance hall and did not go immediately through the barrier which was maintained by the Customs and police authorities, and while I waited there with Mr. Fields and the two agents, we were greeted by a group of four people, one of whom I knew, two of whom I did not; one of them was the Acting French Consul, a Mr. Chanoine. He was accompanied by a person I later came to know as a Senegalese lawyer, Mr. Waddy. There was a man and a woman, making four people in the group, as they came to me, with some excitement they said they wanted to discuss something.

I told them that I really have nothing to discuss with them. The Acting French Consul said that his Charge d'Affaires had been attempting to reach me in connection with an arrest. I said that "Well, I would be happy to

discuss the subject with the Charge," and that he was free to go telephone his Charge, I did not wish to discuss it with him, at which time, with some anger, the group turned and left us.

Q What happened after that?

A After that we waited in this same outer entrance hall until the Pan Am flight arrived from its previous stop and the passengers debarked. When it was evident that it was time for the passengers to go back aboard the plane, and the plane to take on the Dakar passengers, Mr. Fields, Mr. Bocchichio and Mr. Collier and I went through into the waiting room where the wife of the American Ambassador was waiting with her son, and we waited there until the passengers got on board, that is to say, the transit passengers.

When the passengers boarding at Dakar had gone out to the plane we were asked by the Senegalese police to come and wait and plane side, which we did, the four of us, and we waited at the staircase to the First Class entryway to the airplane.

Q What happened after arriving at the area of the plane?

A After we waited there several minutes we were aware that there was a sedan arriving also where we were,

Everything from electronic surveillance through the statements --

THE COURT: What happened with that?

MR. CUTLER: No decision has been made and I never got an answering affidavit from the Government.

MR. DE PETRIS: We appeared before the Court. I don't recall the date. I indicated on the record when we appeared what the Government was opposed to and what it was not opposed to.

THE COURT: I think it was worked out that between yourselves and Mr. Cutler. I am not sure.

MR. CUTLER: Under the bill of particulars, we specifically demanded the exact dates and time and place of the alleged act in furtherance of the conspiracy, that's number 2 under the bill of particulars and number 1, the locus of these co-defendants and the conspirators which Dominique Orsine had contact and also the acts of each individual, the substance of any conversations, exact dates, time, and place and precise manner in which Orsine became a member of the alleged conspiracy.

MR. DE PETRIS: I oppose all of those items.

MR. CUTLER: There is no decision as yet.

MR. GALLINA: At this point I am going to limit my application to the Government for discovery,

or for particulars, to times and places of events that they intend to prove here in Court. I think that is uncontested that the Government must provide that to me.

THE COURT: Do you want to proceed on what Mr. Cutler has or on a letter of your own?

MR. GALLINA: I would be happy to proceed on what Mr. Cutler has because it's already in there, your Honor.

MR. DE PETRIS: I don't recall receiving an order from the District Court to disclose each and every overt act in furtherance of a conspiracy.

THE COURT: No. There was no order.

MR. DE PETRIS: A conspiracy that last for three or four or five years, there are hundreds and hundreds of overt acts, and to require the Government to specify the dates and times of each and every one that occurred during that five year period would be --

MR. GALLINA: Only the ones as to Orsine, where Mr. Orsine was present. If I can show he was elsewhere and not present at that place in time, that is a powerful defense. He should not be deprived of that.

THE COURT: We went over this notice of motion in Court and we agreed on certain things on it.

MR. DE PETRIS: That is correct.

MR. CUTLER: The Government indicated it would give us all that information.

THE COURT: I wrote what the objections were by the Government. As to number nine, there is no objection. Number 20 there is no objection. Number 21 is denied with leave to renew.

But we went over this and some arrangement or agreement was arrived at as to what you were going to get.

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MR. BRENNER: Did your Honor render any decision with regard to Page 8, the motion for a bill of particulars which I think is what we are talking about now?

THE COURT: Page 8?

MR. BRENNER: Number 1, 2, 3 and 4 which are specifications.

THE COURT: We didn't go into the particulars, no.

MR. BRENNER: That is what your Honor is directing Mr. Gallina to direct to Mr. De Petris, only with regard to those overt acts alleged involving Mr. Orsine. I don't think it's 100. It must be substantially less. Mr. De Petris said he would have to give us specifics on every overt act.

THE COURT: Mr. De Petris, you can address yourself to the bill of particulars which was requested on Page 8, 9 and 10, because we never went into that.

MR. BRENNER: That is only with regard to Mr. Orsine. Only those overt acts so that we can prepare an addendum.

MR. DE PETRIS: I don't think I am prepared and I would oppose the requirement that the Government provide every overt act this defendant committed

during the course of the conspiracy.

THE COURT: Is there any part of the bill of particulars that you can --

MR.DE PETRIS: Can I just get my file?

THE COURT: Do you have it, Mr. De Petris?

MR. DE PETRIS: Yes, I am looking to see. In the indictment, in overt act 10, it indicates in or about October 1970, the defendants Murillo, Krimker and Orsine met with co-conspirator Sanderas, and that gives a location of Martinez, Argentina.

MR. GALLINA: We would like to know the date if the Government knows it. If the Government cannot say and can't prove with any more specificity than what is in the indictment, then I agree they don't have to provide it. IF the Government does know, why not give us the opportunity to locate that day, speak to witnesses and find out if they can recall where Mr. Orsine was and if he was not present at that location on that day,. we have a powerful defense. The problem is the Government will go forward with their case and our defense is located in Argentina or in France and it is impossible to just go down to the corner to pick up --

THE COURT: Yes. Can you give them a date on that?

MR. DE PETRIS: No. In or about October 1970. That means exactly what it says. It doesn't mean definitely October 1970. That is an approximation.

MR. GALLINA: Insofar as this witness, Mr. Banderas, is concerned, may I have my associate describe something that happened in the Southern District of New York concerning this witness, so your Honor will understand our problem?

THE COURT: Yes.

MR. BRENNER: I spoke yesterday with an attorney by the name of Joseph Stone who had just finished a trial before Judge Frankel. The name of the case was United States against Marques or Marquez. And during this trial Mr. Banderas, the same witness against Mr. Orsine, testified that he had made a sale of drugs to Mr. Marquez in 1968 or 1969. He gave dates and times and places in great specificity. It turns out that Mr. Marquez was in prison from 1966 to 1972 and the Government was forced to stipulate on the record that Mr. Banderas gave false testimony with regard to a material fact.

Judge Frankel stated that that testimony, as far as he was concerned, was either an outright lie or perjury or something close to it and that is on the record and I will get that transcript when Mr.

Stone is finished.

THE COURT: What has has that got to do with this case?

MR. BRENNER: It's the same witness. All I'm saying is that we have a witness who has been putting people into narcotic transactions where it's been shown that these people were in jail and not in the transactions.

THE COURT: You can tell me anything.

MR. DE PETRIS: This particular lawyer wasn't there when this occurred. I don't know for a fact that any judge found that Mr. Banderas committed a knowing and wilfull falsehood. It may have been an error.

MR. GALLINA: The point of it all is, your Honor, the ability to prove the man was elsewhere was convenient to that defendant at that time because he would remember and know he was in jail.

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THE COURT: I agree, I know you want specificity and you should have it, but the Government will have to give it to you as best as they can.

MR. GALLINA: I understand that, your Honor, but I would like it as to each overt act that the Government intends to present in Court as proof of the conspiracy or the conspiratorial acts of conduct of the defendant so he can defend as to each one of these acts.

THE COURT: Mr. De Petris, as to the particulars, are there any, one or more, of these that you can address yourself to and give them a written answer, if there are, and on this 8th, 9th or 10th page.

MR. DE PETRIS: "Specify the exact times" --

THE COURT: Can you address yourself to any of these and give it to them in writing, that is what I want you to do, and that would in part be getting to where we want to go.

MR. DE PETRIS: Your Honor, I can by tomorrow put something in writing as to these various items. In all likelihood the substance of my answer to these, most of these questions which are so vague and general, is that I would be opposed to respond.

For example, number 5, "State and specify", well, that could take 500 pages to a 1000 pages.

THE COURT: That could go anywhere.

MR. GALLINA: I want it to be responsive, but say number 2 --

THE COURT: Let me say this, can you by tomorrow in writing --

MR. GALLINA: What it boils down to and what we want --

THE COURT: If he can give it to you by tomorrow, if he can give you part of it and then if there is anything after that then you either send a letter or move in Court on what you want --

MR. GALLINA: That is the way I think we should do it.

THE COURT: What else do we have?

MR. DE PETRIS: We have Mr. Bocchichio, whose examination has been delayed a month and a half, I think at least if we can clear that up --

THE COURT: I don't see why we shouldn't.

MR. GALLINA: Tentatively we will set this down for --

THE CLERK: February 4th, your Honor.

THE COURT: I set a date, that date was fixed on the basis of what Mr. Gallinasaid, but he seems to be changing his position.

MR. DE PETRIS: YOur Honor, I would be opposed

to such a lengthy delay, it doesn't appear to be any need or basis for it.

THE COURT: Not at this point.

Yes, Mr. Gallina?

MR. GALLINA: It depends upon the information Mr. De Petris gives on other acts and other dates and it depends upon how long it takes me to check it out in Argentina, and it takes at least two weeks for back and forth.

THE COURT: On your request for a continuance, I would give you a continuance --

MR. GALLINA: I would like around February 10th.

MR. CUTLER: That is a good date, your Honor.

MR. DE PETRIS: Your Honor, at this rate this trial won't go until June or July.

MR. CUTLER: There is a reason, Judge, I have one reason too, as co-counsel, I am just finishing a 14 week trial before Judge Canelli.

THE COURT: But the defendants are in jail.

MR. GALLINA: It is on the defendant's application.

THE COURT: That is true.

MR. CUTLER: We are suffering from problems.

THE COURT: Now what do you have in mind?

MR. GALLINA: February 10th, your Honor.

THE COURT: MR. De Petris, do you have anything to say?

MR. DE PETRIS: Your Honor, I am opposed to that lengthy a delay.

I might also add there is a second co-defendant who is awaiting trial on this case, Raymond Novoa.

THE COURT: Is he awaiting trial here?

MR. DE PETRIS: He is awaiting trial here but he is not in custody, however, he was arraigned in this Court on September 5, 1975 and he had been arrested previously in Puerto Rico and was removed from that district to here, and he was subsequently released on bail when he put up a hotel which he owns in Puerto Rico.

MR. GALLINA: This case has been, I understand, a multi-defendant case but it has been fragmented in all sorts of parts and pieces at this point.

THE COURT: What do you suggest, Mr. De Petris?

MR. DE PETRIS: At the rate things seem to be going with various applications by Mr. Gallina and then the adjournment --

MR. CUTLER: And the failure of the Government to give us that information --

MR. DE PETRIS: The refusal.

It seems like this case may not ever go to

trial even in 1976.

THE COURT: It will have to.

MR. GALLINA: It will.

THE COURT: What do you suggest?

MR. DE PETRIS: It would seem to me that if I give a response to Mr. Gallina in writing tomorrow, it would seen that a February 10th date is not really necessary.

MR. GALLINA: Three weeks for me to put the investigation together in Argentina and discover the witnesses and to relay the information back to Court and for the Court to give up a decision is not excessive, and if I can get that information together sooner, I will present it to the Court and we can accelerate the date.

MR. DE PETRIS: I can assure Mr. Gallina that when he sees my responses to the various items he is not going to have very much to investigate in Argentina.

MR. GALLINA: Your Honor may order more information from the Government.

MR. DE PETRIS: Perhaps this should be put on for some time next week.

THE COURT: For next week?

MR. DE PETRIS: Or leave it open and if Mr. Gallina is not satisfied with the Government's response,

then he can come in next week and request an order from the Court, otherwise it may be three weeks before we come back here, and your Honor has to make a decision on what to order, and then Mr. Gallina will be asking for another month.

MR. GALLINA: Reasonably it is impossible for me to perform these acts in one week, it is impossible.

THE COURT: I will put it over to February 10th at the defendant's request.

MR. CUTLER: Thank you, Judge.

MR. GALLINA: All right.

(At this point two other matters were conducted before Judge Bramwell and then the hearing resumed.)

THE COURT: Do we have the agent here?

MR. DE PETRIS: Yes, your Honor.

THE COURT: Be seated, please.

A N T H O N Y B O C C H I C H I O , having been previously sworn, continued to testify as follows:

THE COURT: Mr. Bocchichio, I remind you that you are still under oath.

I think this is cross-examination.

MR. DE PETRIS: Yes, your Honor.

CROSS-EXAMINATION

BY MR. GALLINA:

Q Good morning, Mr. Bocchichio.

A Good morning, Mr. Gallina.

Q Mr. Bocchichio, when was it that you first came into possession of any information concerning the movement of Mr. Orsine to Paris from -- or to France from Argentina?

A Oh, I would say about a week or two weeks prior to when he actually left.

Q You mean that he actually left around August 7th?

A No.

Q What date was it that he left; do you recall?

A I am sorry, that he actually left, I thought when I left.

Q No, no, when he left.

A Oh, the date, I believe it was early August.

Q You did say about two weeks before that you came into some information or knowledge that there was going to be a movement, from, his person, from Argentina to France?

A A week, two weeks.

Q How did you come into that information?

MR. DE PETRIS: Objection.

THE COURT: Sustained.

BY MR. GALLINA:

Q When was it that you first had a conference with any other official of the Government, our Government, concerning the bringing of Mr. Orsine back to the United States?

MR. DE PETRIS: Objection.

I don't see how this is relevant to the issues here.

THE COURT: Sustained.

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Q Was there ever any plan proposed or worked upon by yourself in conjunction with any other agents of which you became aware of to kidnap Mr. Orsine?

A No, definitely not.

Q When was it that you first became aware of the fact that the contract between the United States and Senegal did not provide for the extradition of an individual who had not been in the demanding state at the time of the alleged criminal acts?

MR. DE PETRIS: Objection, your Honor.

THE COURT: Sustained.

Don't answer it.

Q When did you learn that the extradition had been denied?

MR. DE PETRIS: Objection.

THE COURT: Sustained.

Q Were you present in the court in Senegal?

A No.

Q You were not present in the courtroom at all?

A No.

Q Do you know what agent was?

MR. DE PETRIS: Objection, your Honor, assumes there was one.

THE COURT: Sustained.

Q To your knowledge was there any agent present?

A No.

Q At any time, at any time in the courtroom?

A In Senegal?

Q Yes.

A No.

Q To your knowledge was anybody else such as a member of the State Department present in the courtroom at the time of the decision?

A No.

Q When was the first time you had ever seen Mr. Orsine?

A The first time I had ever seen Mr. Orsine was at the airport when he was delivered to me by the Senegal authorities.

Q On what flight did you leave New York?

A I left on a TWA Flight on Thursday, I don't remember the number.

Q Who accompanied you?

A Mr. Fields.

Q Was anybody else with you?

A No.

Q And did you have any orders with you, written orders with you?

A No.

Q What were your orders?

A I was to accompany Mr. Fields and answer any questions he might have in regard to the case.

Q What case?

A The case against Mr. Orsine.

Q You mean the indictment against Mr. Orsine?

A Yes.

Q And what was your position in the DEA at that time?

A I was in the same position I am right now, I was the acting group supervisor of the group assigned to the Eastern District of New York.

Q What group is that?

A Group 43 is the number.

Q What time would you say you arrived in Senegal, in Dakar?

A I would say it was about two, two thirty on the following day, on the 22nd.

Q In Dakar?

A A Friday.

Q You left on the 21st?

A Yes, it was a Thursday night.

Q Did Mr. Fields have any material or documents

with him?

A He had the extradition papers.

Q How did you know that?

A Because he told me.

Q He told you, you didn't see them?

A I saw the package, yes, they were in a package, they were sealed, I saw that.

Q You didn't know what was in the package?

A I knew, I knew that was for the extradition, he told me, there was no reason to deceive.

Q You didn't see them?

A I saw the package.

THE COURT: This is your witness.

MR. GALLINA: My witness?

THE COURT: It is obvious. It is obvious if a package was sealed --

MR. GALLINA: I would just like to know.

THE COURT: It is obvious, counselor.

MR. GALLINA: I would just like to know.

THE COURT: There is no one here but the Court. He did not see it.

BY MR. GALLINA:

Q Where is it that you first went when you arrived in Dakar?

A I arrived in Dakar, the first place we went was the hotel.

Q What hotel was that?

A Taranga.

Q How is that spelled?

A T-A-R-A-N-G-A, I believe.

Q Who met you at the airport?

A A gentleman from the embassy.

Q Do you know what his name is?

A I don't recall.

Q Do you recall a Mr. Davis?

A Allen Davis, I met him at the hotel, not at the airport.

Q So there was an additional individual at the airport who met you and took you to the hotel?

A Yes.

Q Were your rooms already reserved for you at the hotel?

A Yes, we had reservations.

Q There was a reservation made already for you?

A Yes.

Q So when you got to the hotel there were how many representatives of the American Government there?

A Myself and Mr. Fields.

Q And Davis?

A No, Mr.Davis arrived later while we were in our room.

The individual who brought you to the hotel, did he come up with you to the room?

A No, he left, he went back to the embassy, then he came back again with Mr. Davis.

Q So there were you and Mr. Davis, this unknown individual and Mr. Fields, you were all present in the room and did you have any conversations?

A Yes, we did, Mr. Davis said we had an appointment at the -- I believe it was the Ministry -- I don't remember the exact name, I think the first place we went to was the Ministry of Justice or the Ministry of INterior.

Q Now, from the time that you arrived in Dakar to the time you left Dakar with Mr. Orsine, was Mr. Fields ever out of your presence?

A He went to dinner at the home of Mr. Davis one evening.

Q Just one evening, and that was the only two hour period that they were out of your presence?

A Yes.

Q At any time didyou see him give any money to any official of the Senegalese Government?

A No.

Q Did you give any money at any time to any official of the Senegalese Government?

A No, definitely no.

Q Do you know whether or not any other individual or agent -- I don't mean a narcotic agent, I mean any person -- I am using "person" generically -- of the United States Government or working on behalf the Government ever give any Senegalese official money to influence his conduct in the expulsion of Mr. Orsine?

A Definitely not.

Q You have no knowledge?

A No.

Q When did the other agent who assisted you arrive in Dakar?

A Sunday evening or early Sunday morning, I should say.

Q What is his name?

A Collier, James Collier.

Q When was it that you first requested Mr. Collier's presence in Dakar?

A The day before, Saturday.

Q That would be Saturday, the 21st; is that correct?

Q And who made the request for Mr. Collier?

A I did.

Q How did you make that request?

A I telephoned Paris.

Q You personally called?

A Yes.

Q Do you speak French?

A No.

I spoke to Agent Collier.

Q You spoke to Agent Collier directly on the phone?

A Yes.

Q How did you dial to Paris, did you ask the hotel to do it or --

A I called from the embassy.

Q You called from the embassy?

A YEs.

Q And used a radio telephone there?

A No, a regular -- I didn't dial it. I asked the secretary, whoever is there, I told them what number I wanted, they connected me with the number and I asked for Agent Collier and he got on the phone.

Q And you spoke with Agent Collier?

A Yes.

Q Approximately what time was this that you spoke to Agent Collier?

A Early afternoon, two or three.

Q In the early afternoon, two or three in the afternoon?

A Yes.

Q And he arrived at approximately what time then?

A He arrived early in the morning, about 2:00 a.m., 3:00 a.m. on Saturday morning.

Q Saturday morning from Paris?

A Yes.

Q So the first time he or the Paris office knew that you would want his presence for escort duty in Dakar was the moment you called, around two or three in the afternoon of the 23rd; is that correct?

A Yes.

Q He couldn't be clairvoyant, there was no way he could have known say on the 21st?

THE COURT: He might be clairvoyant, Mr. Gallina, but the witness wouldn't know.

MR. GALLINA: I'm sorry.

Q There was no way that he could have anticipated on the 20th or the 21st or days before you called that he would be escorting Mr. Orsine from Dakar? Is that correct?

A No, he didn't know until I told him that I actually needed him.

Q Now, when was it that you first received any type of notice, you or any other person to your knowledge, received any type of notice that Mr. Orsine was going to be delivered to a Pan Am plane early on Monday morning?

A Saturday afternoon.

Q At approximately what time?

A It was early afternoon, I don't know the exact time, just before I called Agent Collier.

Q What were you told and by whom?

A I was told by Mr. Davis that the Senegalese were going to deliver Mr. Orsine to us on Monday morning.

Q And did he tell you how he came into this information?

A Someone called him from the Government of Senegal and told him that.

Q By telephone?

A Yes.

Q That they were going to deliver Mr. Orsine when?

A On Monday morning.

Q And where were they going to deliver him?

A At the airport.

Q And where at the airport?

A On the runway, the gangway of the plane.

Q On the runway or gangway of the plane?

A Right.

Q Right?

A Right.

Q Could you tell me in words as best you recall them exactly how Mr. Davis relayed the conversation he had on the telephone to you, in other words relate to me as best you can recall Mr. Davis' conversation to you.

A Mr. Davis --

MR. DE PETRIS: Your Honor, I don't quite see how this is relevant.

MR. GALLINA: I will be able to show that, your Honor.

THE COURT: All right.

(Continued on next page)

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Q Yes, Mr. Bacchichio.

A Mr. Davis told me that he had received this phone call --

THE COURT: How are you going to show its relevancy?

MR. GALLINA: If I can be in camera I would tell your Honor, I can show your Honor very easily.

THE COURT: You may proceed.

MR. GALLINA: Thank you.

A He received a phone call and he was told that Mr. Orsine would be delivered to the agents from the United States or turned over to the United States Government on Monday for the first available flight to the United States, which was Monday, and that, that was basically it. We made our reservations after that for the delivery on Monday morning.

Q Who made the reservations?

A One of the gentlemen from the embassy, an administrative authority, Julian something, I don't remember his last name.

Q You weren't present when reservations were made?

A I was present when he called -- I think it

is the airport office, the airport office is right in the building, he went downstairs.

Q What building is that?

A In the same building as the embassy is, in there is a PanAm office.

Q Where were you when Mr. Davis got that phone call?

A I was in his office.

Q And you were there, you actually heard him get the telephone call?

A He was talking in French, I don't understand French.

Q But after he had this French conversation, he turned to you and told you that he had just gotten a telephone call from somebody in the Senegal Government?

A An officer of the Senegal Government.

Q Did he identify who that person was?

A Possibly, I don't recall who the person was.

Q That call would also then be sometime around 2:00 o'clock in the afternoon; is that correct?

A It was early afternoon, the exact time I don't recall.

Q Just before you called Paris?

A Yes, it was maybe 1:00 o'clock, maybe 1:30,

12:30, it was early afternoon.

Q You then turned around and called Paris and asked for Mr. Collier?

A Right.

Q What did you call for Mr. Collier for?

A Because I knew that Agent Collier was in Paris so he would be the agent available; if I wanted to use him, I had his phone number.

Q How many agents are in that group in Paris?

A There is about six.

Q And you, of course, because of your working these cases, you knew who the agents were in Paris?

A Yes, I know quite a few of the agents.

Q Whose idea was it to call Mr. Collier?

A It was mine.

THE COURT: It was his.

Q Nobody suggested to you that you call Mr. Collier even though you knew him?

A I had never met Agent Collier before.

Q You had no orders, you had no orders, this was not a scheme or a plan concocted prior to this moment that Mr. Collier would eventually be present there in Senegal; is that correct?

A No, I had Collier's name, if I needed

assistance, if I needed another agent I was to call Agent Collier.

Q That is what I mean, in other words this wasn't just an idea off the top of your head to call Mr. Collier, you were actually told or you had planned that if you needed somebody for escort duty, if you needed some assistance, you would call specifically Mr. Collier; is that correct?

A Yes.

Q Who told you that?

A I got it from my headquarters.

Q When?

A When I left.

Q All right.

In other words, you were told sometime --

A On Thursday.

Q On Thursday, at least by the 21st of August, that if you needed an escort person to use Mr.Collier; is that correct?

A Yes, if I needed an escort to come back with me, I was to call Agent Collier.

Q And you didn't take anybody from the New York office with you?

A No.

Q But at that time extradition papers had not yet been presented?

A No, but we had already requested his provisional arrest.

Q That was a month before, was it not?

A Yes.

Q Or at least two, three weeks before?

A Yes.

Q And you had no knowledge at that time, nobody told you how long the extradition request hearings would take, they could take two days, two weeks, two months, as far as you knew?

A Correct.

Q You had no knowledge whatever at the time you were in New York prior to leaving on the 21st that Mr. Orsine would be delivered in the morning of the 25th; is that correct?

A I had no knowledge of that at all.

Q And nobody could possibly have known that; is that correct, sir?

A Nobody did know, no.

Q That was an independent decision formulated by the Senegal Government sometime after you and Mr. Fields arrived and presented the extradition request?

A Correct.

Q Now, you arrived there when, Thursday night or Friday morning?

A Friday afternoon.

Q Friday afternoon.

And when was it that you presented the extradition papers?

A I didn't present them, Mr. Fields did and Mr. Davis that afternoon, that same afternoon.

Q You were present there at the time?

A Yes. I was there.

Q What time did your flight come in?

A About 2:00, 2:30.

THE COURT: We have been over that about a half a dozen times.

MR. GALLINA: Yes, sir, yes, sir.

THE COURT: Yes.

BY MR. GALLINA:

Q Just, just what time would you say you presented those documents Friday afternoon?

A When we arrived we were told there was an appointment with someone at the Ministry, I believe at 3:45, 4:00, and we got there a little late, our luggage was lost and we were looking for it, the luggage.

Q When you got to the airport approximately what time would you say you arrived, when you arrived at the time you were starting, that is, that is on the 25th, the morning of the 25th?

A The morning of the 25th, I left Paris, I arrived in Dakar at 2:30 --you mean leaving?

Q Leaving Dakar.

A The 25th, excuse me, we left Dakar about 5:00 a.m. in the morning.

Q What time did you arrive at the airport?

A Say about an hour before maybe, the flight was late, the plane was late, we arrived about 3:00, 4:00 a.m.

Q What time did the flight come in?

A About 4:30, something like that.

Q The flight wasn't held up for Mr. Orsine's presence, was it?

A The flight was late.

Q Well, I'm asking you a question:

Did the airplane arrive and stay at the airport waiting for Mr. Orsine to arrive?

A No, the flight arrived late, people disembarked right after the flight arrived and a little while after we went out on the field and the van came out.

Q Did you at any time see Mr. Orsine prior to his emerging from that wagon?

A No.

Q Had you ever been, let us say, in a room adjacent to him or near him or in a van, say the front end of a van, in the driver's portion of the van while he may have been back of the van, in close proximity to Mr. Orsine?

A No.

Q Do you know of any American agent or any American working for the American Government who might have been in a van with Mr. Orsine?

A No.

Q How did you get to the airport?

A I was driven there with Mr. Fields and Agent Collier by somebody from the embassy, he was Mr. Julian -- I don't recall his last name, the administrative officer drove us.

Q Did you observe the French Consul to be present at the airport?

A Yes, someone told me that the French Consul was at the airport.

Q And you saw him there?

A Yes.

Q Did he not demand to speak to Mr. Orsine?

A I don't know what he was saying, he spoke in French.

Q Did anybody tell you that he wanted to speak to Mr. Orsine?

A Possibly, I don't know, I don't recall it, he was talking to officials of the government of Senegal, I wasn't even near him when he was talking to them.

Q Where was he, what portion of the airport was his?

A They were in the main terminal.

Q In the main terminal?

A Right.

Q He was never allowed to go near Mr. Orsine, do you know, by the airplane, was he?

A He wasn't by the airplane, I don't know if he was allowed or not, but he wasn't there.

Q Did you see Mr. Orsine's wife there?

A Yes.

Q And was he allowed to communicate with or be in the presence of Mr. Orsine?

A Not that I know of.

Q Did Mrs. Orsine attempt to speak to you or any other persons in the terminal?

A She never attempted to speak to me, she was

speaking -- she was with her lawyer, I believe another gentleman and Mr. Orsine's brother, and they were talking amongst themselves, talking to the counsel and the counsel was talking to some Sengelese authorities, but they never talked to me.

Q Who was the person in charge at the airport of this movement of Mr. Orsine onto an airplane?

A You mean from the Senegalese Government?

A No, I don't care who it was, just who was in charge of this operation.

A The man I saw there at the airplane was Mr. Neday.

Q That is the prosecutor?

A No, he is a policeman.

Q The Chief, the Chief of Police?

A I don't know if he is Chief of Police, I don't know his exact title, I know he is a policeman.

Q You were aware at that time, weren't you, that extradition of Mr. Orsine had been denied by the Court?

A No, I was not.

Q Nobody told you that?

A No, I didn't know whether Mr. Orsine was being extradited or expelled until I returned to the United States.

Q Well, you know what expulsion means, do you not?

A Yes.

I knew that he had appeared in court on Saturday and that he was ordered released, I knew that, but I didn't know that extradition was denied.

Q Well, when a man is released --

A He was released on one specific thing, the way -- the way it was -- it was strange, I was under the impression that the Ministry of Interior had under Senegal law, well, the Ministry of Interior can supersede the Ministry of Justice with regard to certain circumstances, if, one, he was rearrested for something else, but I never knew that the extradition had been denied, I did not know that extradition had been denied.

Q Who described to you the matters to which you just testified, the facts of that?

A I believe Mr. Fields when we were at the -- when we were at one of the Ministry offices, we went from one to another, I don't recall which was the first one, we went from one Ministry, the Ministry of Justice or whether first was the Ministry of Interior and with some Minister they were speaking French and Mr. Fields was telling me what they were saying.

(Continued on next page.)

Q When was this that Mr. Fields told you that?

A This was on Friday, we only had the one meeting.

Q So Mr. Fields told you wh- , then, on Friday?

A Well, the gentleman from the Ministry of the Interior or Justice was explaining Senegal law and what the possibilities, you know, what the law was, to Mr. Fields.--

Q Yes.

A And he then explained them to me.

I don't know whether he told me right then or he told me when he left.

Q He explained to you at that time that there was, even though the judicial body might order his release, that the Ministry of Interior still could do other things with Mr. Orsine; is that correct?

A Yes, something to that effect.

Q And this was repeated to you by Mr. Fields because the minister spoke in French; is that correct?

A Yes.

Q But you were present at the time that the minister explained it to Mr. Fields?

A Yes, and he explained that to me.

Q Which minister was it?

A I don't know his name.

Q Was it the Minister of Interior or the Minister

of Justice?

A I don't know where we went first, that is my problem, I don't know whether we went to the Ministry of Justice first or the Ministry of Interior, I am not sure.

Q This was the first ministry?

A The first one that we went to, no, it was the Ministry of Foreign Affairs.

Q Then which minister in the order of chronology told it to you?

A I believe it was the Minister of Interior, I am not sure.

Q Was it the first one you went to?

A The second.

Q The second Ministry you visited?

A Yes.

Q Now, were you in communication with Interpol at any point, Interpol,Washington?

A Interpol communicated with us but usually it comes to me from my headquarters, I don't directly, we have an agent assigned to Interpol, Washington.

Q Well, Interpol, you utilized Interpol facilities for notifying Dakar about the provisional arrest; is that correct?

A I would send a cable to my headquarters and they

would send it from whatever American dictated it. I don't know how they did it.

Q This was not an Interpol stimulated provisional arrest, this was something that you requested Interpol to do; is that correct?

MR. DE PETRIS: Objection.

THE COURT: Sustained.

Don't answer it.

MR. GALLINA: Your Honor, if I may make a showing out of the presence of the witness.

THE COURT: The objection is sustained.

MR. GALLINA: I think I can show --

THE COURT: Continue on your cross-examination.

MR. GALLINA: I would like to make an offer of proof, your Honor.

THE COURT: All right, come up and make the offer of proof.

(The following occured at side bar without the hearing of the witness.)

MR. DE PETRIS: Your Honor, I am aware of a telegram of Interpol long before he ever arrived.

THE COURT: What does that have to do with it?

MR. GALLINA: That is what I wanted to tell your Honor --

THE COURT: What does that have to do with it?

MR. GALLINA: Yes.

These agents told or they dictated the text of the telegram, Interpol only repeated what they wanted.

THE COURT: From his testimony he contacted the DEA and they took care of what was done.

MR. GALLINA: Your Honor, the information in the Interpol telegram is this, they suggested to Interpol, Dakar, that probably extradition cannot be effectuated, this is in July, the end of July, and they suggested that some means be utilized to expel the defendant onto an American plane. In a telegram they suggest this.

I am telling your Honor now that I believe with the proper interrogation of this officer that it will come out that there was a scheme, a conspiracy to effectuate this type of illegal conduct long before they even went to Dakar.

MR. DE PETRIS: Your Honor, if I could just comment, Mr. Gallina seems again to be under the mistaken impression that if there is an expulsion then that is a violation under Tosconino and that is not the law.

MR. GALLINA: If it is a corrupt act of the

United States Government, a bribery or something of that nature.

MR. DE PETRIS: The questions have already been asked and denied.

THE COURT: We are not anywhere near that.

MR. GALLINA: You will be near that.

THE COURT: I don't know if I am near it but up to now we are not.

MR. GALLINA: I promise you at the depositions we will be.

THE COURT: You are promising, you are promising me for the future, but at this point you are not anywhere near it.

MR. GALLINA: That is my case, then, I wish to corroborate through our own agents.

THE COURT: The objection is sustained.

(The trial then proceeded within the hearing of the witness.)

BY MR. GALLINA:

Q Have you ever had an occasion to read the Interpol telegrams?

A Yes.

Q And the Interpol telegrams that were sent prior to your going to Dakar, copies of those were given to your

group; were they not?

A Yes.

Q So you were aware of the INterpol telegrams that were sent let us say in July, the end of July concerning Mr. Orsine's arrival or proposed or intended arrival in Dakar, they were specially made aware to you as the acting group supervisor?

A Yes.

Q And at that time of course you were already aware from your reading of these telegrams and from your conversations with other agents and maybe the United States Attorney, you were aware already that extradition was probably not possible?

A The first time in July we were aware there was no extradition treaty, I was aware there was no extradition treaty with Senegal,yes.

Q And you were aware that your agency or maybe the United States Attorney's office or a combination of the two were suggesting through Interpol that the defendant, because he could not probably be extradited, be expelled onto an American plane?

A We were asking for an expulsion or an extradition.

Q Yes, but you had suggested --

A We didn't suggest, we -- we -- we can't, it would have to be through the State Department.

Q But you were aware of an Interpol suggestion?

A Yes.

Q By virtue of a July telegram that the defendant be expelled onto an American plane because extradition would probably not be successful?

A I don't remember if that is what was said, but I do know that extradition was -- was not successful or was -- we were unable to extradite and then we would ask for an expulsion.

Q But you were aware by reading Interpol telegrams weren't you --

MR. DE PETRIS: The question has been answered.

THE COURT: Sustained.

MR. GALLINA: May I have a moment, your Honor?

THE COURT: Mr. Gallina, unless, if that is the telegram, unless it is something that he did, then it is not proper at this time. He has already told you what his knowledge is and what he told you is almost the same thing we took at side bar, so I don't know what you are going to look for.

MR. GALLINA: I will just ask this one further question.

BY MR. GALLINA:

Q All the information that Interpol got in order to send its telegrams it got from the United States Government, did it not?

A Going from here to Senegal?

Q That is correct.

A Yes.

Q It came from your group; is that correct?

A Most of it.

Q And it came from you, you were the acting group supervisor?

A It didn't have to come from me, it could have come from our Washington -- I never spoke to Interpol, we had an agent assigned to Washington at Interpol during this whole matter that I recall, I would send a cable to my headquarters in Washington, they would send it to Senegal by whatever -- we usually have offices, we have offices in foreign countries, we send them to our offices, and if we have no way to communicate with our offices, it went into INterpol.

Q The Interpol telegram would be based in essence on the information that you gave to your Interpol officer in Washington?

A To my headquarters in Washington, I would send

them a cable giving them information or making a request and that cable would be forwarded to whatever channels that they decided to forward it to.

Q All of that business about extradition and expulsion if extradition didn't take place, all of that came from you?

MR. DE PETRIS: Objection, your Honor.

THE COURT: Sustained.

Don't answer it. Give him the next question.

BY MR. GALLINA:

Q You know that Mr. Orsine came into Dakar on a French plane; is that correct?

A Right now I don't recall what airplane he came into Dakar or it could have been I believe Lufthansia --

THE COURT: What difference does it make?

Q You know he didn't come in on a Pan Am plane?

A No, I don't know how he came from Argentina to Dakar.

Q Mr. Fields or nobody, nobody described to you the fact that --

MR. DE PETRIS: Objection.

THE COURT: Objection sustained. It would be all hearsay.

MR. GALLINA: All right.

At this time I have no further questions of this witness.

THE COURT: Anything further?

MR. DE PETRIS: I just have one question.

REDIRECT EXAMINATION

BY MR. DE PETRIS:

Q After you, after -- withdrawn.

Initially you said that you were advised by someone that there was no extradition treaty between the United States of America and the Government of Senegal.

A Yes.

Q Were you subsequently advised that even though there was no extradition treaty, extradition was possible under the laws of the Government of Senegal?

A Yes.

MR. GALLINA: Objection.

THE COURT: Overruled, I will permit it.

What was the answer?

THE WITNESS: Yes.

THE COURT: The answer is yes.

Q Even though there was no extradition treaty?

A Yes.

MR. DE PETRIS: I have nothing further.

THE COURT: Mr. Gallina?

RECROSS EXAMINATION

BY MR. GALLINA:

Q Who advised you that even though there was no treaty providing for extradition there could still be extradition available?

A Either someone in the United States Attorney's office or I received a cable.

Q From whom is that?

A It could have been a cable from the embassy in Dakar to the United States stating this.

Q Do you have a copy of such a cable?

A Possibly, I would have to check, I would have a copy of all the cables that went back and forth.

MR. GALLINA: Your Honor, could your Honor order that I receive a copy of that particular telegram?

MR. DE PETRIS: I don't see its relevancy to whether the defendant was tortured or whether or not someone was paid, I don't see how it is possibly relevant.

MR. GALLINA: Every time we have a hearing, he spends three to four hours or two hours on entirely irrelevant questions.

THE COURT: What is the relevancy of this

telegram?

MR. GALLINA: First, I didn't ask the question, it was Mr. De Petris --

THE COURT: It doesn't make any difference, it is as good as any one you asked.

MR. GALLINA: He is relying on certain information in answer to that question and I am asking him where he got that information from.

THE COURT: Well, you accepted what he told you on every thing else, on all the other information, why don't you accept this like you accepted everything else?

You have been accepting what he said here and it has been double hearsay and any way it came, but you have been accepting it and you are going to have to accept this, too.

This has been your approach all morning here.

(Continued on next page.)

Q You don't recall if it was an assistant but you think it was a telegram?

A I think it was a cable that I received from Dakar? It would go again through Washington and to me.

MR. GALLINA: I would request of the Court the discovery of that cable.

THE WITNESS: That would probably be a classified cable.

THE COURT: If it is classified would it be subject to confidentiality of the agency?

MR. DE PETRIS: It would be classified within the Drug Enforcement Administration and Department of Justice.

In order to produce that in Court it would have to be declassified.

MR. GALLINA: I don't see where that presents or prevents the Court to order its presentation to me. He testified about the guts of it.

THE COURT: I don't see that it is going to be that important or necessary. For what purpose do you want it? Is it the credibility of this agent?

MR. GALLINA: Yes.

THE COURT: Application denied.

MR. GALLINA: I have no further questions.

MR. DE PETRIS: I have nothing further, your Honor.

THE COURT: You may step down.

Thank you.

MR. DE PETRIS: I have no further witnesses, your Honor.

You have heard Mr. Fields from the State Department --

THE COURT: This is the extent of what the Government will present concerning the motion and the application of the defendant.

MR. DE PETRIS: Yes, unless Mr. Gallina, depending upon what Mr. Gallina does in response. I don't know what else he has.

THE COURT: Mr. Gallina, the Government has no further witnesses in connection with this particular motion which you have before the Court.

MR. GALLINA: The defendant would be ready to go forward and we would like another date.

THE COURT: You request a continuance, do you?

MR. GALLINA: Yes.

THE COURT: What date did we agree on, February 10th?

MR. GALLINA: Yes. February 10th. I will

endeavor to get all the information to your Honor beforehand so you can rule on it. In that way we can go forward.

THE COURT: I think that would be best. As soon as you possibly can.

Anything further at this time?

MR. GALLINA: Nothing further.

THE COURT: All right, February 10th.

The Government has completed its presentation of testimony on the defendant's motion?

MR. DE PETRIS: Yes, your Honor.

* * * *

I N D E X

WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
ANTHONY BOCCHICHIO		31	64	65

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

----------x

UNITED STATES OF AMERICA, :

-against- :

DOMINIQUE ORSINI, :

Defendant. :

----------x

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D. N.Y.
AUG 20 1976
TIME A.M.
P.M.

74-CR-492

United States Courthouse
Brooklyn, N.Y.

July 26, 1976
3:35 p.m.

B e f o r e :

HONORABLE HENRY BRAMWELL, U.S.D.J.

I hereby certify that the foregoing is a true and accurate transcript of the stenographic proceedings in the above-entitled matter.

Perry Auerbach
Official Court Reporter
U.S. District Court

PERRY AUERBACH
ACTING OFFICIAL COURT REPORTER

(12)

Appearances:

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Assistant U.S. Attorney

GINO E. GALLINA, ESQ.
-and-
JOEL BRENNER, ESQ.
Attorneys for Defendant

THE CLERK: United States v. Dominique Orsini.

THE COURT: Yes, Mr. DePetris, what do we have on for today?

MR. DE PETRIS: Alan Davis who originally Mr. Gallina wanted to depose in Senegal. The Government said we would produce him in court to testify. He's here and prepared to testify as to what happened in Senegal during the period of time of the arrest of Mr. Orsini in Senegal.

MR. GALLINA: Maybe momentarily we can just busy ourselves with another matter. My secretary is just finishing up all the affidavits that I am to sign and have signed already concerning the individuals that I have questioned in Buenos Aires, vis-a-vis the alibi and character witnesses. The gathering of this material, as I had indicated to your Honor originally would be of some effort. It's taken quite a bit of time, and quite a bit of labor, quite a bit of work on the part of the Interpreter.

The telephone systems are terrible.

THE COURT: And when will you get those?

MR. GALLINA: If your Honor desires them for your reading tonight, I will have them delivered. If not, I can bring them tomorrow morning first thing.

THE COURT: All right. Tomorrow will be fine.

MR. DE PETRIS: I will be leaving New York tomorrow afternoon, and will not be back in town until probably Friday some time. If I can have the papers before to review while I am aware, I can probably respond.

MR. GALLINA: No question about that. I will see they are delivered to you.

May I have about two or three minutes with Mr. Davis prior to putting him on the stand?

MR. DE PETRIS: I have no objection.

MR. GALLINA: I have had --

MR. DE PETRIS: This is outside the presence of the jury. I don't really see the necessity for it.

MR. GALLINA: Okay. Fine. As long as you are going to put him on the stand for direct. I thought I would have to put him on for direct.

THE COURT: Yes. I think that's part of the case of Government witnesses.

MR. GALLINA: Good. Then there's no necessity.

MR. DE PETRIS: The Government calls Alan Davis.

THE COURT: Sure.

A L L E N C. D A V I S , having been first duly sworn by the Clerk of the Court, was examined and testified as follows:

THE CLERK: State and spell your name for the Court Reporter.

THE WITNESS: Allen C. Davis, A-l-l-e-n C. D-a-v-i-s.

THE CLERK: Thank you. Be seated.

MR. DE PETRIS: Has the Interpreter been sworn, your Honor?

THE COURT: No. Swear in the Interpreter.

(Whereupon, the Interpreter, Jose M. Moreno-Lacalle, was duly sworn by a Clerk of the Court.)

DIRECT EXAMINATION

BY MR. DE PETRIS:

Q Mr. Davis, by whom are you employed?

A I am employed by the United States Department of State.

Q In what capacity?

A I am a foreign service officer. I am presently Deputy Chief of Mission, where I have been assigned for two years.

Q And what position did you hold on approximately July and August of 1975?

A At that time I was Deputy Chief of Mission of the American Embassy in Dakar.

Q And that's in Senegal?

A I was serving as Charge d'Affaires.

Q Now, I direct your attention to July of 1975, did you become aware during that month that a professional request was made to the American Embassy in Dakar concerning Dominique Orsini?

A Yes. On July 30th I received a communication from the Department of State to that effect.

Q Now, did there come a time subsequent to receiving that communication when Dominique Orsini arrived in Dakar, Senegal?

A Yes. He arrived approximately one week later.

Q During the period of time of July 30th and the arrival of Mr. Orsini, was there any contact between the American Embassy in Dakar and the Senegalese Government?

A Yes. There was contact with the Senegalese government on the evening of July 30th, and there was contact again on July 31st. There was contact again with them on the 6th of August.

Q And would you relate to the Court the substance of the contact on July 30th, 31st and August 6th?

A The contacts were both oral and in writing,

informing the Senegalese Government that the American Government expected Dominique Orsini to transit Dakar en route from some South American city on his way to France, and that he was wanted for some crimes that had been committed and which should be known to the Senegalese Government because of Interpol.

Q Because of Interpol?

A Yes.

Q Were you present at the airport at Dakar, Senegal, when Dominique Orsini arrived in Senegal?

A Yes. I was present at the airport.

Q Were thereany other members of the American Embassy present at the airport on that occasion?

A There was one other officer of the embassy present with me at the airport.

Q Now, would you relate to the Court what happened when the plane on which Mr. Orsini was traveling arrived in Dakar, Senegal, as best you can recall?

A Upon the arrival of the Air France flight, very early in the morning, I don't remember the exact hour, but it was approximately five o'clock in the morning, I was standing beside the information desk where there was an attendant of Air France with a loudspeaker microphone. At our request, the attendant there at the desk paged

Mr. Tryal.

Q He's a member of the Drug Enforcement Administration?

A Yes. He was an agent. We had been informed that he would be on the plane which was arriving, and as the passengers debarked, we had him paged, and he came to the desk and I presented myself to him.

Q What happened then?

A At my request, Mr. Tryal identified Dominique Orsini by nodding and pointing in his direction, at which time I turned to the Senegalese police officials who were present and told them that this was the person we had asked them to arrest provisionally.

Q And to whom did you deliver this communication?

A To an attendant of the Senegalese police, who was there, whose name I do not know for certain.

Q Now, after you conveyed this information to the member of the Senegalese police, what happened?

A That officer and several others surrounded Mr. Orsini, arrested him and took him away from our presence into a room which I had known to be used for questioning.

Q This is at the airport; is that correct?

A Yes.

Q Did you go into this room?

A I did not go into the room.

Q Did any other members of the American Embassy?

A No.

Q Did Special Agent Tryal of the DEA go into this room?

A Special Agent Tryal remained with me in the waiting room of the terminal and did not go into the room.

Q What happened next after they took Mr. Orsini into this particular room?

A We waited in the waiting room of the terminal, not knowing what was happening inside the room where Mr. Orsini was, there were no windows through which we could see, and since we had no access to it, we did not know what was going on there.

After waiting approximately -- this has to be a guess -- it's been almost a year -- I would say twenty minutes or so, we were aware that Mr. Orsini and several Senegalese police officials were leaving the room and going out of the terminal,not coming near us.

Q Did you ever see Dominique Orsini after that particular event took place at the airport?

A The next time I saw Mr. Orsini was on the morning of August 7th when he was delivered to the ramp going into the Pan Am flight which brought him back to the

and this sedan was followed by a closed van. These two vehicles and perhaps one more vehicle of the Senegalese police, but at least two had stopped there.

Mr. Sadibou Ndiaye had come out of the first vehicle and informed us that Dominique Orsini had attempted to slash his wrist. At that moment the rear door of the van burst open and out came several men, including Dominique Orsini, and I would estimate from six to ten Senegalese police officers attempting to restrain him.

He was moving as much as he could and shouting "Assassin -- assassin" and his clothes were dissheveled, and he was attempting to free himself from the control of the Senegalese police officers.

Q What happened after the initial descent from the van?

A He was taken directly, as quickly as he could be taken, struggling, to the foot of the staircase and there, the Senegalese officers were accompanied up the staircase by the two American agents, Bocchichio and Collier, who were during the ascent of the staircase attempting now to -- it seemed to me -- attach handcuffs.

Mr. Orsini was setting his feet against the staircase as he was being lifted up, and resisting with considerable energy, and the whole crowd of people, perhaps

twelve people up the staircase together.

Q What happened once Mr. Orsini was taken into the aircraft?

A I remained on the ground, but I could see through the windows of the aircraft as the Senegalese police officers, Agent Bocchicchio and Agent Collier took Dominique Orsini through the First Class section into the tourist section of the plane, about halfway to the rear of the plane, and there they seated him on the left hand or port side of the plane. He was seated between the two agents, Collier and Bocchichio.

The Senegalese officers came out of the plane, obviously relieved to have finished their task, and we waited on the ground for I would estimate five or ten minutes wondering why the plane doors were not being closed and why the plane was not departing. It was already some -- there had already been, I would estimate about 45 minutes delay.

Then, Mr. Fields who had been inside the airplane and who had already bid us good-bye, he came out of the plane to tell us that the pilot of the plane had told him that he would not depart, that he felt that the safety of the plane and its crew and its passengers would be endangered by his transporting someone who is in such an agitated state as Mr. Orsini appeared to be, and that he

would require that some sedation be given to the prisoner.

Q What, if anything, did you do upon being advised of this?

A I inquired of the legal adviser of the Department of State whether I was authorized to ask someone to administer sedation. I was informed that I should have no qualms about it, that it was a perfectly correct request, and upon this I asked a member of my staff to go and look for the Peace Corps physician, whose name is Albert Green. At that time, this member of my staff did leave in a sedan and returned about twenty-five minutes later with this Peace Corps physician.

I accompanied Dr. Green inside the aircraft. I stood at the doorway, the rear doorway of the plane, forward some fifteen or twenty feet and discussed with the two agents, with Mr. Fields and with Dominique Orsini what he had been asked to do.

There, at first, it was obvious that Mr. Orsini did not wish to be given sedation. Then, protesting only mildly, he was given a shot by Dr. Albert Green.

Q Now, after the shot was administered to Mr. Orsini, what happened?

A After he had given the shot to Mr. Orsini, Dr. Green and Legal Adviser Fields went to the cabin, the

pilot cabin of the aircraft, and while I was not present -- they told me later -- and I believe you have a statement to this Court from Dr. Green saying that he informed the pilot that he had administered hypodermic shot of vallium, I am not certain of this, what the substance may have been, but upon informing the pilot fhat he had given this tranquilizer, he left the plane and I left with him.

Q And did the plane shortly thereafter leave Dakar?

A Within very few minutes after that, I would estimate ten minutes, the plane took off.

Q If I can backtrack for just a moment: When the vehicles arrived at the area of the Pan Am aircraft, did you have a conversation with Mr. Ndiaye?

A Yes. As I mentioned earlier, Mr. Ndiaye came to me and said, "Dominique Orsini had attempted to cut his wrists."

Q Did he advise you as to any medical treatment Mr. Orsini received?

A Yes. He said that after Mr. Orsini had cut his wrists that he and others had taken him to the hospital where he had -- where a doctor had attempted to suture the wound or the wound that had been made on the wrists of Orsini.

Q Mr. DAvis, once again, to your knowledge, did any American agent or official of the American Embassy see or meet with Dominique Orsini between the time of his arrest, upon his arrival in Dakar, and the early morning hours of August 25th when he arrived at plane side?

A To my knowledge, no member of the American Embassy in Dakar and no other American official met with Orsini at any time during his stay in Senegal.

Q And you are in charge of the American Embassy in Dakar, Senegal during this period of time; is that correct?

A Yes, I was.

Q And all members of personnel in Dakar were responsible to you?

A Yes.

MR. DE PETRIS: I have nothing further.

THE COURT: All right.

Cross-examination.

MR. GALLINA: Your Honor, may we have about five minutes?

THE COURT: You may step down.

(Whereupon, a recess was taken at 4:15 p.m.)

(Whereupon, the Court resumed at 4:20 p.m.)

A L L E N D A V I S , called as a witness, having been previously duly sworn, resumed and testified as follows:

DIRECT EXAMINATION

BY MR. DE PETRIS (Cont.):

MR. DE PETRIS: Your Honor, I have just one or two additional questions.

THE COURT: All right. You may ask them.

Q Mr. Davis, during the time that Dominique Orsini was in Senegal, to your knowledge, either did you observe or did you learn from anyone that any American agent or official physically assaulted Dominique Orsini?

A I did not. And I do not believe that he was physically assaulted by any American in Senegal.

Q To your knowledge, did any American agent or official instruct anyone else to physically assault or abuse Dominique Orsini?

A To my knowledge, they did not. And I do not believe that any American had any role in assaulting him or mistreating him in any way.

MR. DE PETRIS: I have nothing further.

THE COURT: All right, Mr. Gallina, you may proceed.

CROSS-EXAMINATION

BY MR. GALLINA:

Q Mr. Davis, I am Mr. Gallina, the attorney for Mr. Orsini.

Mr. Davis, how long have you been with the State Department?

A Approximately twenty years.

Q And do you have any background with any other governmental agency besides the State Department?

A I served in the United States Navy for awhile. That's about it.

Q Do you have any affiliation with any other Governmental agency as a corresponding agent or an undercover agent?

A I have none.

Q Mr. Fields was called upon by you to assist your legation or your embassy in what field?

A As an expert in the legal field.

Q Specifically in the legal field in reference to what?

A I did not call upon him as an expert in any specific legal field. I simply knew him as the Assistant Legal Adviser to the Department of State, and I assumed him to be competent in various legal fields. I had no legal background, and I called him, I needed him for advice.

Q You say you asked for specifically a person from the State Department to come to Senegal who might be an expert in legal matters; is that correct?

A That's correct.

Q Now, legal matters you are talking about didn't have to do with an auto accident.

THE COURT: It was Mr. Orsini. That was the legal matter, and we are all aware. Ask him specific questions.

Q It had to do with extradition specifically; is that correct?

A It had to do with a proposed provisional arrest of Dominique Orsini.

Q Under the laws of Senegal, you must have been --

THE COURT: This man is not a lawyer, Mr. Gallina. Don't even ask him about the laws here, because he is not an expert in that, either.

Q At the time that you were Charge d'Affaires, were you aware, had anyone briefed you as to what the laws of Senegal required for an extradition?

A No one had briefed me on the requirements of the Government of Senegal for extradition.

Q Nobody told you about that, not even Mr. Fields?

A Your question is unclear to me.

Q Did Mr. Fields brief you, as an expert in legal matters, having to do with the matter for which he was there, the extradition of Mr. Orsini? Didn't he brief you as to

what was required by the laws of Senegal?

MR. DE PETRIS: Objection, your Honor. There's been no testimony that he was there for the extradition of Mr. Orsini. It was the extradition or expulsion.

MR. GALLINA: Now you see, your Honor, we are getting back to my --

THE COURT: Why didn't you ask him what he was told?

Q Tell us exactly what all the conversations that you had with Mr. Fields concerning the Senegalese law and extradition. What did he tell you?

A I was asked by the American Department of State to request of the Senegalese authorities that Dominique Orsini be provisionally arrested for eventual, either expulsion or extradition to the United States.

Q Correct. And under the law of Senegal, the term "provisional arrest" is something that is written in the law, and is a requirement that a man be provisionally arrested and there should be a hearing.

A I am not aware of that, and I have not researched, and I do not know.

Q Did Mr. Fields ever discuss with you what requirements there was by the law of Senegal or the

Government of Senegal in order for a man to be extradited?

A I did not rely upon Mr. Fields for the requirement of the Government of Senegal in this connection. I relied upon him for advice concerning American law and what would stand up in court.

Q I understand that, but I asked you a direct question.

Did you ever discuss with Mr. Fields and any of these matters about which I am talking about now?

A If I did, I do not remember the details.

Q Did you discuss it with Mr. Ndiaye or any other member of the Senegalese Government?

A I think it's logical that during my contacts with the Senegalese officials, the subject might have been touched upon, but I do not recall the details.

Q And in essence, you are telling us now that you cannot recall whether or not you had any conversations about what the Senegalese Government would require of the American Government?

THE COURT: Mr. Gallina, is that the issue that's before this Court?

MR. GALLINA: Yes, your Honor.

THE COURT: It is?

MR. GALLINA: I will show that.

THE COURT: The legality or illegality of the law of Senegal?

MR. GALLINA: The matter of --

THE COURT: This is not a Toscanino hearing. And that's the issue that the Court has before it, and I think you should address yourself to the issues.

MR. GALLINA: As to the offer of proof, your Honor, may I make a statement?

THE COURT: Make your statement.

MR. GALLINA: The fact is that the defendant has continuously, during this hearing, contended that the American Government knew that they could not extradite or became aware at some point they could not extradite, and then join in.

THE COURT: That might be an issue for another hearing, but that isn't specifically what's been before this Court.

MR. GALLINA: They then joined in an illegal pattern of conduct with the Senegalese Government within the dictates of the Toscanino to kidnap the defendant.

THE COURT: Is there anything else you want to ask this witness?

MR. GALLINA: Oh, certainly, about anything he

testified to.

THE COURT: You know that's not exactly the way the issue is before the Court.

You go ahead if you have other things to ask him.

MR. GALLINA: I will try to be more specific with him.

Q When were you first notified the defendant was coming to Senegal?

A Late in the evening of July 30, 1975.

Q And how were you notified?

A I was notified by telegram from one of our embassies in South America.

Q And do you know who notified you?

A It was an official communication from another embassy.

Q Well, did it come from an agent or from a State Department employee, a Drug Enforcement agent?

A Communications between embassies are sent over the signatures of ambassadors.

Q Excuse me a second.

At the time that you received thisfirst communication, in addition to embassy officials such as yourself, State Department officials who were present in the

embassy, was there attached to the present in the embassy or in the country, to your knowledge, any agents of the C.I.A. or F.B.I. who have also helped or assisted in this action?

MR. DE PETRIS: Objection.

THE COURT: Sustained.

Don't answer the question.

Q Did the DEA agents assist you or were they stationed in the embassy at that time?

A There are no DEA agents attached to the American Embassy in Dakar, nor were they at the time.

Q Were there any in the embassy or in the country who were working with you at the time this matter was going on?

A There was none before the arrival of the agent who came in the same plane that brought Dominique Orsini to Dakar.

Q Did he remain there during the --

A He remained there for approximately one week.

Q Now, you stated that on your direct examination that during this one-week period you had contacts both oral and in writing with the Senegalese Government or its agents; is that correct?

A Yes. There are continuous contacts between the Embassy and the Senegalese Government agents.

Q I am talking about the Orsini matter.

A I am continually on this subject.

Q When was the first contact?

A The first contact was on the evening of July 30, 1975.

Q And between whom and whom and how was that done?

A The contacts were oral. They were between me and the Acting Minister of Foreign Affairs.

Q And what was his name?

A His name is Francois Bob.

Q What did you tell him at the time?

A I told him that upon the request of my Government I was requesting that the Senegalese Government provisionally arrest Dominique Orsini who would be arriving at an Air France flight the following morning, and that they hold him for eventual expulsion or extradition to the United States.

Q You used the word "provisional arrest." Is that the term that you have learned about subsequent or is that a term that you have used actually that day?

A It is a term which I used that day, because it had been used in the correspondence which I received from our own Department of State, and from the Embassy in South America, who informed us of the travels of Dominique Orsini.

Q And at that time, did you say anything about documents to follow?

A I do not recall. It is entirely possible that I did.

Q And when was the next correspondence or communication or meeting during that week?

A There was no further contacts or requests made during the week which followed July 30th until the afternoon of August 6th.

Q All right. Do you have a copy of that telegram that you say you received on the 30th with you today?

A I do not.

Q You don't have any copies of any telexes, telegrams, communications or letters having to do with this affair with you?

A I do not. If the Court needs these documents they should be requested from the Department of State, not from me.

Q In other words, they do exist. They have not been destroyed.

A I do not know.

Q Have any documents or correspondence in the matter been destroyed?

A I have no knowledge.

Q Did you destroy any or order any to be destroyed?

A I did not.

Q Do you know of any that were destroyed?

A No. I know of none that were destroyed.

Q Who is Mr. Mbacke?

A Mr. Mbacke ordinarily has the title of Technical Consul of the Ministry of Justice, in the absence of the Minister and anyone else who would be superior to him. In other words, the top man.

Q Mr. Ndiaye?

A Mr. Ndiaye is an agent of the judiciary police and --

Q And he's the Senegalese Interpol representative; isn't he?

A I heard that he is. I have not seen documentation to that effect.

Q Now, you say on the 6th was the next meeting that you had with anybody from the Senegalese Government concerning Orsini; is that correct?

A To my knowledge, that is correct.

Q And that was the day before Mr. Orsini arrived in Senegal?

A That is correct.

Q And with whom did you meet?

A I met with Mr. Bebrameme Acqueme (phonetic) who is the technical consul of the Minister of Affairs.

Q What was that meeting about?

A That meeting was to tell Mr. Barane that rather than try to arrange in the middle of the night for a provisional arrest of Mr. Orsini, I would appreciate his telling me what procedures to follow in case we learned that Mr. Orsini was taking the flight that he --

Q What did he say?

A He said that the Senegalese Government remained willing to cooperate with the American Government on this subject, and that if by chance we received a communication that Orsini would be on the flight, this is a once-weekly flight, that I should come and he would accompany me to the airport.

Q By the way, did you, at any time during this period of the week, advise the Senegalese Government or become aware of any advice by somebody, some agency from the United States, either DEA or the State Department, that if Orsini were to arrive, and if he were to be provisionally arrested, and if Orsini could not be properly extradited because of the laws were not so permitted, that such arrangements such as expulsion should be arranged?

A I am afraid I can't answer your question with any certainty. It's entirely possible that this kind of conversation took place.

Q In fact, aren't there telegrams to that effect existing, during this week already with setting up the whole plan?

THE COURT: Mr. Gallina, you don't have to testify. You can ask him. You don't have to testify. I am not going to go by what you say.

MR. GALLINA: I know that, your Honor. I am asking him --

THE COURT: Did you ask? What did you ask him? Ask the question again.

Q Is there a series of such telegrams or aren't there telegrams evidencing that fact?

A What fact?

Q The fact that you were aware of it already, and the American Government and you were aware that extradition probably was not possible, that you were going to try to arrange some expulsion to America.

A I was fully aware of those treaties which exist between the Government of Senegal and the Government of the United States, and I knew that there was no extradition treaty. I assume it was for this reason that

the Department of State had repeatedly, whenever it raised the subject with me in communication had said that we request that Dominique Orsini be provisionally arrested with a view towards either expulsion or extradition to the United States.

Q You know the difference as a senior official of the State Department, do you not, between expulsion and extradition?

A I do not know the technical.

Q Expulsion means thrown out of the country.

MR. DE PETRIS: Objection. He said --

THE COURT: Sustained.

MR. GALLINA: May I just pursue this just once?

THE COURT: He said he doesn't know the difference. Why don't you ask him the next question?

Q You know of no such difference. You don't have a scintilla of a concept or idea.

THE COURT: Mr. Gallina, as to the legal, he said as to the legal differences.

Q Do you know the practical difference or the difference that a consul or officer would understand within the scope of his art, the difference between extradition and expulsion?

A I am afraid I do not know the full difference

between expulsion and extradition.

Q What do you understand the difference to be?

A As I understand the difference, under an extradition proceeding there must be specific documents which are specifically treated in specific ways that are exchanged with that understanding, but having no firm knowledge. I requested that the Department of State assure that this full package of extradition documents be prepared and be delivered to the American Embassy in Dakar, should they be requested by the Senegalese Government.

Q Mr. Davis, you are a twenty-year --

MR. DE PETRIS: Objection, your Honor.

THE COURT: Sustained. Don't answer that question.

Q You understand, of course, very roughly that extradition means by legal process or one way or another a person being requested by a requesting state that a person be taken by the demanding state and be given up by another state by some sort of legal process; is that correct?

A I am sorry. I simply do not know the legal technicalities of extradition and expulsion. I did not attempt to become involved in those technicalities because I did not feel competent.

Q I am not asking you the legal technicalities.

THE COURT: Mr. Gallina, you will not have to go into that because whether he knows or doesn't know the legal technicalities and what the legal technicalities may be, you can put that into your memorandum of law.

MR. GALLINA: Just as an offer of proof for your Honor at this point?

THE COURT: What he knows.

MR. GALLINA: No, no.

THE COURT: Well, it isn't what he knows. Just ask him as to what you are going to get from him, and I don't think you have to go into what his knowledge is. Your knowledge is good enough for me.

Q What was your understanding as a Charge d'Affaires of what expulsion meant?

THE COURT: Mr. Gallina, I am not interested in these technical differences for purposes of this hearing.

MR. GALLINA: I am not, either.

THE COURT: And whether he knew it or not.

Ask him what he did, what he said, and what happened. That is what I am interested in.

MR. GALLINA: Your Honor, the whole pattern of conduct --

THE COURT: No. You don't have to go into the technicality of the differences. I am not interested in them.

MR. CALLINA: Your Honor, I am just trying to --

THE COURT: You ask him what he did or what he said or what happened. That is what I am interested in.

Q You requested by some sort of communication of the State Department that they send an expert in legal matters to assist you in this extradition; is that correct?

MR. DE PETRIS: Objection.

THE COURT: Sustained.

Q Did you not request an expert in legal matters to come to assist you in Senegal?

A I did request that an expert in legal questions come.

Q And did you not request a packet of extradition documents to accompany this individual; did you not?

A That's correct. And I stated in my request that I felt it advisable to have these documents in the eventuality that the Senegalese Government preferred to follow an extradition proceeding.

Q Well, who had you discussed the possibility of what the Senegalese Government might or might not want in

the Senegalese Government?

A I discussed it by correspondence with the Department of State and with the Ministry of Foreign Affairs of the Government of Senegal.

Q What did they tell you they wanted?

A Until the 21st of August -- they gave me no firm indication of what they wanted. On the 21st of August I was informed that the documentations for extradition proceedings should be delivered. Until that time I had informed them that once the documentation had been prepared and was ready, they asked it be held in the United States until requested by the Senegalese Government.

Q You were not aware of what was going on in court during this period of time between the Senegalese Government and Mr. Orsini, were you not, by somebody in the Senegalese Government?

A I was not kept informed.

Q You mean nobody in the Senegalese Government corresponded or communicated with you or any member of your staff concerning the problems or progress of what was going on or what Mr. Orsini was doing to attempt to gain his freedom?

A That is precisely it.

Q After the 21st, the first time from that

moment on, did you hear anything whatsoever about Mr. Orsini on the 21st; is that correct?

A The only information communicated to me was an informal communication at some stage between that date of arrest and the 21st, in which I was informed by an acquaintance in the Ministry of Foreign Affairs that he had been arraigned.

Q Who was that acquaintance?

A I do not recall. A Ministry of Foreign Affairs official.

Q Was it Mr. Ndiaye?

A Mr. Ndiaye does not work for the Ministry of Foreign Affairs. He works for the Ministry of Justice.

Q Mr. Mbacke?

A He works for the Ministry of Justice, as well.

Q And you can't recall the man?

A I cannot. It would have been one of the three persons, perhaps Mr. Wane Barane, perhaps Mr. Abraham Ajane, perhaps Francois Bob. One of those persons.

Q Now, your communication to the State Department for legal adviser was sent when?

A Requesting that the legal adviser come.

Q With the packet of extradition documents?

A On the 21st of August.

Q On this packet, and the flight and the people arrived all within twenty-four hours; is that correct?

A The communication to the Department of State was so urgent that I handled them by telephone.

Q That was that urgent, as you just said it was, so urgent that you handled it by telephone?

A We had been waiting. Once we were asked to deliver the documents we felt it extremely urgent to get them there immediately.

Q So you had no communications, you made no inquiries for two weeks, you made no communications for two weeks. You get an informal request or hint that something's going on, and then you make an urgent call to the State Department, and within less than twenty-four hours have Americans --

MR. DE PETRIS: Objection.

THE COURT: Sustained.

Q Well, within twenty-four hours of your receiving a communication -- withdrawn.

You didn't receive any communication, you say, for two weeks; is that correct?

A I received no official communications for that period.

Q You just received this piece of gossip from one of three acquaintances?

A I would not characterize it as gossip. It was given to me by someone familiar with the case.

Q He just brought you up to date that he had been arraigned.

A I think it's useful to put it into the record here --

Q I don't know --

THE COURT: One minute. You let him finish the answer.

A (Continuing) I think it's useful to put into the record here that throughout these proceedings I was acutely conscious of the need to allow the Senegalese Government to act in full sovereignty, and to take acts upon its own decisions rather than to be coerced, rather than to have the American Government be insisting upon actions which we wanted. With that in mind, the Embassy acted with great care in allowing the Government to take decisions without pressure or insistence from us.

Q Mr. Davis, you tell us that you knew that there was no extradition treaty which covered the acts for which Mr. Orsini had been indicted. That much you knew?

A Yes.

Q And you knew, therefore, he couldn't be extradicted under the law as existed then?

A No, I did not know he couldn't be extradicted under Senegalese law.

Q You knew the law had not covered the act for which he had been indicted.

A No.

Q You testified to that previously.

THE COURT: He said he knew there was no extradition treaty. That's what he knew.

MR. GALLINA: That's correct.

THE COURT: But he didn't know he could be extradicted under the law. That is what he said.

Q Was extradition requested at the time you asked for a provisional arrest?

A At the time I asked for provisional arrest, I asked that the Government of Senegal either expel or extradict the prisoner to the United States.

Q And you did suggest at that time that the Government expel if they did not see fit to extradict him to the United States?

MR. DE PETRIS: Objection.

THE COURT: Sustained. Don't answer the question.

Q Let me ask you this: Did you not state specifically that your communication to the Senegalese Government, that if they did not see fit to extradict or grant an extradition to the United States, they need see fit to expelling him to the United States? Did you not say that?

A If I did not say that, it seems to me that it's inherent in the request that he be expelled or extradicted to the United States. Either movement, either action was entirely acceptable to my Department of State.

Q Of course, you knew there was no such a thing in the parlance of anybody who has ever been involved in State Department matters or diplomatic matters as an expulsion to other countries. It's expulsion from a country, it's expulsion to a country, that is an extradition to a country, but an extradition from a country.

MR. DE PETRIS: Objection.

THE COURT: Sustained. Don't answer the question.

Q Isn't it a fact that at the time you made your original request, you knew what you were requesting was illegal under Senegalese law?

MR. DE PETRIS: Objection.

THE COURT: Sustained.

Don't answer the question.

MR. GALLINA: Excuse me, your Honor.

(Whereupon, Mr. Gallina went over to defense counsel table and returned to the lectern.)

Q You knew, did you not, Mr. Davis, that a person who was expelled from a country would have a choice of what country he could go to?

MR. DE PETRIS: Objection.

THE COURT: Sustained.

Don't answer the question.

Q You received, you say, your first communication on the 30th of July. By whom did you receive that communication? From whom?

THE COURT: He's been over that.

MR. GALLINA: I just have a specific one. I am sorry I forgot that.

THE COURT: That's noticed. So what difference does it make? He got notice.

Q Was that notice, was that request --

THE COURT: He doesn't have those telegrams. They are in possession of the State Department. He hasn't destroyed them. He hasn't tried to. He doesn't know if anybody's tried to. We have been all through them.

Q Was that a telegram or telephone call?

A There was a telegram. I do not recall whether there was in addition a telephone call.

Q And was that from Mr. Fields?

A I do not recall from what official it came. It was an official source in whom I had confidence.

Q Let me ask you this: You asked for an expert on what date, from the American State Department, to assist you?

A On the 21st of August.

Q Okay. So that was the first time Mr. Fields came into existence; is that correct?

MR. DE PETRIS: Objection.

THE COURT: Sustained.

MR. GALLINA: Your Honor, may I -- I am pursuing, I think, a factual question that's very important.

THE COURT: Ask him who came as a result of this request.

Now, Mr. Fields probably was in existence before this time. I am sure he was.

MR. GALLINA: I am sorry. That's true.

Q You never communicated with Mr. Fields prior to that date; did you?

A Oh, yes. I had had several telephone

conversations with Mr. Fields.

Q Prior to the 21st?

A Yes.

Q What was the first time that you spoke to Mr. Fields?

A I cannot tell you with any certainty. Quite possibly as early as, oh, the 30th or the 31st of July.

Q In fact, wasn't it Mr. Fields, this legal expert upon whom you called, the one who called through the Marine Guards at your Embassy the information that he wanted a provisional arrest of Mr. Orsini, who might transit through Senegal?

A I don't know that for certain. The records of the Department of State will show that quite clearly. It's all in writing in the records of the Department of State.

Q When did you present your formal request for extradition to the Senegalese Government?

MR. DE PETRIS: Objection.

THE COURT: Sustained.

Don't answer the question.

Q Were you at a meeting on the 22nd of August, 1975, in any office of the Senegalese Government?

A Yes. On the 22nd of August I was in a meeting first at the Ministry of Foreign Affairs with Mr. Wane

Barane, a technical consul, and from his office we went to the office of Mr. Mbacke at the Ministry of Justice.

Q And you say you only stayed about twenty minutes at the first office; is that correct?

A Well, it was slightly complicated, because after waiting twenty minutes we met with Mr. Barane, and unfortunately we were stuck in an elevator for a couple of minutes.

Q But the timing was very critical; was it not?

MR. DE PETRIS: Objection.

THE COURT: Timing as to what?

MR. GALLINA: The timing.

Q In other words, the Senegalese officials from the Foreign Ministry indicated to you that was very important that you went over to the Department of Justice because the court was right then and there considering the matter; is that right?

A We were informed if it was not being considered at that moment that, yes, such eventuality was imminent. It would take place very soon.

Q And so they wanted you to present that packet of extradition requests that day?

A The Senegalese did request that we get them the packet as soon as possible.

Q When did you turn them over to the Senegalese Government?

A On the afternoon of the 22nd of August, 1975.

MR. GALLINA: May I have page 42?

Q Now, when was it that you say that you received a telephone communication indicating that the Senegalese Government was going to turn Mr. Orsini over to the American Government?

A At approximately 1400 -- 1:00 p.m. on the afternoon of the 23rd.

Q Now, you recall that Agent Collier was called for, is that correct, because you wanted somebody or Mr. Fields wanted somebody who would be fluent in French to assist in escorting Mr. Orsini back to the United States?

A I don't know that the fluency in French was the most important qualification. It was a very useful one. I do not know that he was requested. It was requested that he come from Paris, and he did so on the 24th of August.

Q And he was called, a telephone call was made to Mr. Collier, when?

THE COURT: If he knows.

Q If you know.

THE COURT: He didn't say that he knew.

A When the telephone call was made from Fields

to Collier?

Q Yes. Well, when was Mr. Collier requested to come to Dakar?

A Collier's presence in Dakar was requested, to the best of my knowledge, on the 23rd of August. In much the same way as we purchased tickets anticipating that Dominique Orsini might be leaving Dakar on the 25th of August. We anticipated that we would need, if he should depart, we would need another agent to help escorting him to the United States.

(continued next page)

Q Was that done by communication between the Embassy in Dakar to the Embassy in Paris?

THE COURT: What was done?

Q The request for this additional agent.

A I do not recall whether it was handled by telephone or telegram. It was by one or the other.

Q Mr. Fields testified that it was after he learned, after he learned that the defendant was to be delivered to the agents on Monday morning at the airport that he called or telexed for Mr. Collier?

A Then I think you should be guided by what he said. I do not recall whether it would be before or after.

Q Common sense would tell you it was after --

THE COURT: You already have that in the record. You didn't need to put it in again, but you put it in, anyway.

Q So there would be no way that there should have been any communication in existence on the 21st of August between your embassy and Paris indicating that they needed an agent who was fluent in French who could escort Mr. Orsini on Monday morning in the Pan Am flight.

THE COURT: If he had anything to do with what?

MR. GALLINA: Well.

THE COURT: If he had anything to do with it?

Q You are in charge of the embassy; aren't you?

A Yes. He was in charge of the embassy.

Q And anything that would have gone out under your hand and name you would have seen?

A Unless it would have been a telephone call.

Q It's impossible really, practically looking at the whole situation, for anybody could have been clairvoyant to know on Friday what was going to happen on Sunday morning; is that correct?

MR. DE PETRIS: Objection.

THE COURT: Sustained.

Rephrase your question.

Q Did you know before you got the telephone call, the so-called telephone call on Sunday morning, that you were actually going to receive Mr. Orsini on Monday morning?

A The first moment at which we received any assurances, whatsoever, that Dominique Orsini would be delivered to plane side on Monday, 25th of August, was at approximately 1300 on the afternoon of August 23rd.

Q When you use the word "assurances," I am sure I am dealing with a person who measures his words very carefully. Do you know that the first time you had an absolute promise or did you have some suggestions prior to that moment?

A We had no suggestions prior to that moment. We kn[illegible]nat there were three Pan Am flights to the United States each week, and we knew the week flights to be on the morning of the 25th of August.

Q When did you speak to Mr. DePetris before you came here and testified?

A I have spoken with Mr. DePetris only once in person. That was in Washington, approximately two weeks ago.

Q And did you discuss these matters at any length?

A During approximately twenty minutes or twenty-five minutes we discussed these matters.

Q And prior to testifying here today, did you discuss this with Mr. DePetris?

A I arrived at the courthouse at approximately twenty minutes, twenty-eight minutes after three, and we came directly to the court.

Q Prior to testifying here on any occasions, did you speak to Mr. DePetris -- withdrawn.

Did you discuss it also with anyone else such as Mr. Bocchichio or any other person involved in this case besides Mr. DePetris?

A I have had a dialogue with Mr. Fields of the Department of State ever since we first became acquainted, on his visit to Dakar.

Q And when was it that you first discussed this business of the reservations being made prior to the telephone call on Sunday?

THE COURT: When did you first discuss them? Inwhat context, you mean, when they were made?

MR. GALLINA: The preparation for his testifying here.

Q When was it that you first discussed that aspect of your testimony prior to testifying?

A I don't understand your question.

Q Prior to testifying here today, did you discuss with Mr. DePetris or anybody else the fact that the reservations for the flight had been made prior to the telephone call from the Senegalese Government at 1300?

A That's all a matter of record. I may have discussed it with him. I don't see that it's material.

Q When did you first discuss that with Mr. DePetris?

A The first moment I could have discussed it with him was about two weeks ago when I met him in Washington.

Q And did you discuss it with him then?

A It's entirely possible that I did. I can't tell you for certain. It seems to me incidental. I would not have hesitated.

Q I think that was very incidental.

THE COURT: He has the right to an opinion.

Q The reservations were made on the 22nd, is that correct, or the 23rd?

A The reservations were made on the morning of the 23rd.

Q Then Agent Collier, who testified here in court that he had been called on Thursday or Friday, which would have been the 20th or the 21st, and had been told to stand by and be ready to come to Senegal to escort Mr. Orsini on Monday on a Pan Am flight to New York could not have possibly been true; is that right?

A I do not --

THE COURT: One minute.

Mr. Gallina, if the 23rd is a Saturday and you say the 20th or the 21st is a Thursday or Friday, then he can't answer that question.

Q Well, you never told us --

THE COURT: No. Because those dates are correct. The 23rd is a Saturday. The 22nd is a Friday. How can he answer your question if you are posing something which is inconsistent?

Q Agent Collier testified that Thursday or Friday he was told by telephone that he would have to go to

Senegal to escort Mr. Orsini to New York Monday morning on a Pan Am flight. Nobody --

MR. DE PETRIS: Objection. There isn't a question here at this point, your Honor. Mr. Gallina's making a statement.

THE COURT: Sustained.

Rephrase your question.

Q Well, I will ask you this question: Prior to your making the reservations on the 23rd, you didn't have any knowledge, did you, or nobody had any knowledge that Mr. Orsini was going to be on a flight Monday morning?

A The reservations were made before we were told the Senegalese Government that Orsini would be on the flight. We did this as contingency planning just as we alerted the embassy in Paris to the possible need for Agent Collier.

Q On the 24th --

MR. DE PETRIS: Objection. That's not his testimony.

THE COURT: Sustained.

MR. GALLINA: That was Mr. Fields' testimony. I am sorry.

Q Now, do you recall being at the Ministry of Justice on the 23rd of August with Mr. Mbacke and Mr. Fields

and others?

A Negative. I did not go to the Ministry of Justice on the 23rd of August.

Q Let me read to you this question and this answer by Mr. Fields:

THE COURT: What page is that?

MR. GALLINA: Sorry, your Honor, the pages are misfiled.

Q Now, Mr. Fields stated on page 85 -- withdrawn.

I will get to that question right after.

When was it that you realized or were informed that Mr. Orsini had been released by the court?

A I have never been officially notified by the Senegalese Government that Mr. Orsini had been ordered released.

Q Did you ever get a copy of the court order?

A No, I did not.

Q Do you read French?

A I do read French.

Q Nobody has advised you as to what the Court has ordered in this case?

A I am not -- I don't feel I was concerned with it.

Q Up to this date you have never been so advised?

The first time yo are hearing this is from me?

A I have read this in the French newspaper, but I have never been officially advised.

Q I am not --

THE COURT: He's told you.

Q I am talking about your person, your human person, that the court ordered his release.

A Oh, I have heard it discussed, but the Senegalese Government has never --

Q When was it that you first heard it? Was it on the 23rd?

A I do not recall. It's not a concern of mine, and wasn't in my official capacity.

Q Were you notified or did you hear of it before Mr. Orsini was expelled from the country?

A I do not recall.

Q Do you recall if there was any communications or any conversations by you with others concerning that fact before Mr. Orsini had been expelled from the country?

A I was told that a conversation with Mr. Mbacke on Friday, the 22nd of August, that this was a possibility.

Q And weren't you told on the 23rd that this was exactly what the Court had decided?

A I was not.

Q Were you not in a meeting on the 23rd, and I'm relating to Mr. Fields testimony on cross-examination on page 85 on line 22, 21:

"Question: Who was present?

"Answer: The Charge, Mr. Davis; technical consular, Minister of Justice, Mbacke Moctar; technical consular, Minister of Foreign Affairs, Wane Barane; and the Director of the Judicial Police, Sadibou Ndiaye, Mr. McKee and Agent Bocchichio."

A That meeting took place on the 22nd.

Q And what did the Minister of Justice, the technical advise you at that time?

A He advised me that we had been provided, which has been required by the Government of Senegal, and that we should await the decision of the Government of Senegal as to the outcome.

Q Didn't he tell you that he would get those documents immediately to the court for their consideration?

A I believe he did, yes.

Q And that he told you subsequently that there was a decision made on the 23rd.

Let me read you this question:

"Question: Now, he told you --"

THE COURT: Where are you reading from?

MR. GALLINA: 86, bottom line 22.

"Question: Now, he told you that subsequently you learned there was a decision made on the 23rd; is that correct?"

THE COURT: That's the 23rd the decision was made. This is on the 22nd they are talking about.

MR. GALLINA: I realize that.

THE COURT: We will make it clear.

Q And you had been present when the document had been presented to the Government with the idea of running them right over to the court on the 22nd; is that correct?

THE COURT: What I am going to tell you, Mr. Gallina, this testimony says nothing about a decision being made on the 22nd. There is nothing in the record that shows that.

MR. GALLINA: The decision was made on the 23rd, your Honor.

THE COURT: No question about that, and any inference you may have made that there was something said or done on the 22nd is not shown in this record.

MR. GALLINA: It can't be, your Honor. There is no decision of the Court on the 22nd.

THE COURT: No decision of the Court.

MR. GALLINA: Except on the 22nd they were

going to make, present the extradition document to the--

THE COURT: As to the 22nd, him having some knowledge of what the Court's decision was going to be or someone came and told him, is not in this record.

MR. GALLINA: I don't even mean to imply that.

THE COURT: You are implying things, but not consistent.

MR. GALLINA: The package presented on the 22nd, the Ministry of Justice saying immediately over to the 23rd. They get it over to the Court on the 23rd, and this witness says he heard about it, but he doesn't know.

THE COURT: That's his decision.

MR. GALLINA: Within twenty-four hours, there's a packet brought and presented immediately in an excited state of affairs to the court, and all of a sudden nobody even cares of what kind of decision the court is going to come out with?

THE COURT: That's a statement by you, and it's gratuitous, and it's something which you can reserve for any use that you feel it requires.

MR. DE PETRIS: Your Honor, my understanding of this hearing, and from the cross-examination of all the witnesses who have testified in this case, I

haven't seen one iota of evidence to support a Toscanino hearing. All of Mr. Gallina's cross-examination of what the Court in Senegal did is irrelevant. What the Court did, if the Government of Senegal acted to expel or extradict Dominique Orsini, that's the end of the ballgame.

MR. GALLINA: Your Honor, if we can show motive and support --

THE COURT: Motive for what?

MR. GALLINA: Motive for an illegal act of kidnapping, together with torture with which Mr. Orsini suffered.

THE COURT: What torture? What torture?

MR. GALLINA: Which Mr. Serge will testify to.

THE COURT: It's not before the Court.

MR. GALLINA: It will be. It's subject to a deposition.

Q Was any member of your embassy or staff or anybody that you knew of was working in that country was an agent in America, such as a DEA agent, present in court at the time of its decision?

A There were no members of the embassy present in the court during our meeting with the Acting Minister of Justice on the 22nd. I inquired specifically whether it

would be appropriate for any member of the embassy to be present at the court hearing on this subject and was advised that the Senegalese Government preferred that there be no Americans present.

Q And so, did you order that no Americans be present?

A The only Americans who might have been interested were myself and Mr. McKee, who was in the room at the time, and I may very well have advised that nobody go. Had anybody gone, it would have been me, in most likelihood.

Q And Mr. Green works for the -- not your embassy?

A He is a member of the Peace Corps staff. In a country such as Senegal, where there are several agencies, such as the Department of Defense, and Peace Corps, and United States Information Agency represented, they all must answer to the Charge d'Affaires or to the American Ambassador.

Q Was he at the airport prior to Mr. Orsini's being brought there?

A No, he was not.

Q When you were at the airport were there any radios, walkie-talkie radios being utilized by American agents, to your knowledge?

(Pause)

You know what I am talking about, the small

mobile communication sets?

A I do not believe any American mission was using walkie-talkie at the airport. It is not totally out of the way, because we do have some walkie-talkie sets. I believe that there was none being used at the airport that evening.

Q Did you have one in your automobile? Were you using any inyour automobile on your way to the airport?

A My automobile has a set installed. It's entirely possible that it was used.

Q Were you using it in communication with Agent -- on the way to the airport?

A What agent?

Q Any agent? American agent or members of your staff.

A I believe I was not. If I was using it in communicating to the Marine guards or to other people who might have been in the embassy, it would be on a purely incidental question, such as the arrival of a vehicle at the airport.

Q When you were at the airport you stated that you were approached by a French consular; is that correct?

A The acting French consular, yes.

Q And did he indicate they were trying to communicate with you or how many days?

A As I recall the conversation, he said, "My Charge d'Affaires is trying to reach you today."

Q And you refused to talk to him ?

A I said that I had nothing to discuss with him, and that if he wished his Charge d'Affaires to speak with me, I shall be happy to speak to him. He should call him.

Q Did he indicate to you that he wanted to speak to Mr. Orsini?

A I do not recall that he did.

Q Did you speak to Mr. Orsini's attorney, Mr. Wade?

A Mr. Wade spoke to me. I do not recall what he said.

Q You mean to say he never asked to speak to Mr. Orsini?

A I believe he did not ask to speak to Mr. Orsini, because I did not have custody of Mr. Orsini.

Q Didn't he ask what was happening to Mr. Orsini?

A He may very well have asked that question.

Q What did he say?

A I do not recall. This was a nervous conversation in which one person accompanying the three others, a gentleman, not Mr. Wade, not the French Consul, not the lady, but a third man was very nervous and he said, "Pan Am boom,"

that I remember. The other words which may have been stated, I do not recall.

Q Mr. Orsini exited from the truck in what manner?

A He was extremely active, flailing his arms, his clothes were disheveled, there was some bloodstains, his shirt was open, and he was furiously struggling to release himself from the police officers that were holding him.

Q The airplane was where?

A On the loading apron just adjacent to the terminal.

Q Now, besides the fact that you testified that there was no funds, no monies expended to pay anybody in the Senegalese Government, for any purpose in connection with this matter, this case of Mr. Orsini's, was there any propositions made on a diplomatic level to the Senegalese Government in connection with Mr. Orsini's matter?

A Could you state the question again? What do you mean?

Q You have testified there were no monies passed through hands?

A There were no promises of money. There was no money offered. There was no money promised in any way to any Senegalese official in connection with this matter.

Q Was there any promise made, direct or implied concerning any matter of benefit to the Senegalese Government by the United States Government in connection with the Orsini matter?

A Certainly I made none, and I believe no others were made by any other person.

Q Have any protests been lodged with the Senegalese Government or with your embassy in Senegal?

THE COURT: By whom?

Q By the Senegalese Government or the courts or any person.

A Have there been any protests made to the American Embassy --

Q Yes. Concerning Mr. Orsini's removal from Dakar.

MR. DE PETRIS: By whom?

A Not to my knowledge.

Q To your knowledge, has there been any protest by the Senegalese Government to the American Government as to what happened in Senegal with Mr. Orsini?

A There have been, to my knowledge, no protests made by the Senegal to the American Government.

Q Have there been any protests by the French Government, to your knowledge?

A To whom?

Q To the American.

A I know of none from the French to the American Government in this matter.

Q You say you have no knowledge, you only know of it at your end as the Charge d'Affaires at the American Embassy in Senegal?

A That is a reasonable assumption.

Q You wouldn't know that French Foreign Ministry may have made a protest to the State Department?

A It's possible it could happen and I would not know about it.

MR. GALLINA: May I have just one moment, your Honor?

Q Do you know under what name Mr. Orsini's ticket was purchased?

A I believe his ticket was purchased under the name of John Smith or James Smith. A name.

Q And did you utilize any of the legal protocol required, such as visa or passport or exit documents, any of the necessities that are required for a person going from one country to another when you took Mr. Orsini out of Senegal?

MR. DE PETRIS: Objection. That is an assumption. It is unnecessary.

THE COURT: Sustained. Don't answer the question.

Q Well, at the time that you purchased the tickets from Mr. Smith, were any documents presented to identify Mr. Smith to the Pan American authorities?

A None were presented.

Q Were any presented to Senegalese police officials or Customs officials at the time of his exit from the country concerning Mr. Orsini's identification?

A We left those arrangements entirely to the Senegalese.

MR. GALLINA: Just one last question, your Honor.

Q Would you please relate to us the full statement of Mr. Ndiaye or if it was Mr. Ndiaye, whoever it was, that notified you on the 23rd of August, as to the fact that Mr. Orsini would be delivered the following morning on the Pan Am flight?

MR. DE PETRIS: Objection. That's not the testimony.

THE COURT: Sustained.

Q Who was it? Somebody notified you that Mr. Orsini would be presented to the Americans. Who was that?

A Mr. Sadibou Ndiaye, a representative of the

judicial police of the Government of Senegal telephoned me at approximately 1300, in the afternoon of August 23rd, and informed me that Dominique Orsini would be delivered to the Pan Am plane on Monday morning, August 25th.

Q And that was all he said?

A He may have said some few other words, but that's the essence of it.

Q Did he say anything about the court decision?

A He did not describe the court decision to me.

MR. GALLINA: I want to just speak for one moment to my client.

THE COURT: Step down a minute. I have something else I have to take care of. Step down, Mr. Davis, please.

MR. DE PETRIS: Can the witness go to the men's room, your Honor?

THE COURT: Sure. Go ahead.

(Recess.)

THE COURT: Come up and sit down, Mr. Davis.

(Whereupon, the witness, Allen Davis, resumed the stand.)

THE COURT: Yes, sir? Mr. Gallina.

MR. GALLINA: Your Honor, I have no further questions.

THE COURT: Anything further?

MR. DE PETRIS: No, your Honor. I have no further questions.

Mr. Davis will be returning to Senegal tomorrow, so I would assume that Mr. Gallina will not have any questions for him in the future.

MR. GALLINA: Well, I don't think I will, your Honor.

You know, I never know what happens in life.

THE COURT: What do you want? To fly to Africa again?

MR. GALLINA: Your Honor, the position is that I don't envision needing Mr. Davis any further.

THE COURT: All right. Thank you, Mr. Davis. Thank you very much.

MR. GALLINA: Your Honor, there are a series of documents that I wish to offer into evidence. I am going to show them to Mr. DePetris this week. I think that would be the proper way to get his consent as to the authenticity of the translation which I have done, and then that evening give them to the Court for the Court's consideration as to the defendant's partof the case.

THE COURT: Is there anything further as to this

hearing? Does the Government have anything? Does the Government rest?

MR. DE PETRIS: Yes.

THE COURT: The Government rests. What do you have to do, Mr. Gallina?

MR. GALLINA: As you remember, your Honor, on the 11th of August we are going to be deposing Mr. Serge in London.

THE COURT: When do you intend to get your memorandum of law and whatever else you may have to complete?

MR. GALLINA: I will have the memorandum of law basically all done and whatever input Mr. Serge has, I will put in right after the 11th, as soon as I return.

THE COURT: This case is for trial on September 7th; is that correct?

MR. GALLINA: I understand that, your Honor.

One further matter, I will present tomorrow morning the affidavits and my affidavit.

THE COURT: In connection, findings of fact and conclusions of law, and these must be locked into the transcript.

MR. GALLINA: Correct. And I will have the

other matters for you tomorrow morning, and I will give a copy to Mr. DePetris.

MR. DE PETRIS: Your Honor, the only problem I foresee, as I was hoping it wouldn't develop, but apparently the way these depositions have been dragging, it appears there's going to be a substantial problem, that is, while I realize there has been a substantial period of time between Mr. Orsini's arrest and the date of Mr. Orsini's arrival in the United States and the date of the trial, I think it's very clear that the delay has been caused by this Toscanino-type hearing and the various delays requested by the defense.

I might point out, however, that since the trial is scheduled for September 7th, the way the depositions have been scheduled at this point, it appears that August is going to be spent, a substantial part of August is going to be spent by myself perhaps doing depositions in various areas of the world which will encompass a substantial amount of time and which time I had intended to use to prepare for trial and get ready for trial.

Now, while I realize that this is an old case in that Mr. Orsini has been in jail for a substantial

period of time, I would submit that if there are going to be substantial amount of time spent on depositions, on preparing findings of fact and conclusions of law which really can't be prepared until these depositions are over, then I think it's going to be very difficult for the Government to be ready for trial on September 7th. I am not asking the Court for a substantial adjournment, but if the depositions are in Argentina, I would request perhaps a week or two delay of the trial.

MR. GALLINA: The defendant Orsini, will consent to that.

MR. DE PETRIS: As your Honor knows, these depositions have been delayed and delayed and delayed. I realize that Mr. Orsini is in custody.

THE COURT: We have other defendants, too.

MR. DE PETRIS: Yes, your Honor.

THE COURT: This is all part of the problem.

MR. DE PETRIS: It's my understanding that with respect to one of the defendants there will be a disposition. With respect to the other defendant, this man is not in custody, he has made no objection to a speedy trial of any kind.

THE COURT: Yes.

MR. DE PETRIS: And he is in Puerto Rico, and I had mentioned this to counsel,

THE COURT: Here's what you will do. You will do what you can, and on the 7th when you come in we will see just where you stand.

MR. DE PETRIS: Fine. I just wanted to mention that to the Court. I know the Court is going away in August, and I wanted to alert the Court the possible problems because of the lengthy time of depositions.

THE COURT: We won't make any changes and we will see what happens on the 7th.

MR. GALLINA: Thank you, your Honor.

Have a nice vacation and a good summer, your Honor.

MR. DE PETRIS: Thank you, your Honor.

THE COURT: Thank you.

(Whereupon, the Court was adjourned.)

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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

-against-

DOMINIQUE ORSINI, a/k/a
DOMINGO ORSINI,

Defendant.

74-CR-492

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D. N.Y.
SEP 10, 1976
TIME A.M.
P.M.

United States Courthouse
Brooklyn, New York

Jury Room No. 3
September 1, 1976

DEPOSITION of MR. MARIE(?) APPOLINE SERGE taken on August 24, 1976 at the United States Embassy, London, England, and reported from videotapes by Daniel D. Simon, Official Court Reporter, United States District Court for the Eastern District of New York.

EASTERN DISTRICT COURT REPORTERS

I hereby certify that the foregoing is a true and accurate transcription of my stenographic notes.

Daniel D. Simon
Official Court Reporter
U.S. District Court for the
Eastern District of N.Y.

(13)

Appearances:

DAVID G. TRAGER, ESQ.
United States Attorney
for the Eastern District of New York

BY: CAROL AMON, ESQ.
Assistant U.S. Attorney

GINO GALLINA, ESQ.
Attorney for Defendant

Also present:

RICHARD W. ELAN
American Consul, American Embassy

LUCIEN HENRIESSEY, ESQ.

ROBERT PALOMBO, ESQ.
Special Agent

MARINA IRENE SPIEGEL,
Interpreter

MR. ELAN: Do you solemnly affirm the statements you are about to make in regard to this translation will be completely true and accurate?

MISS SPIEGEL: Yes, I do.

MR. ELAN: My name is Richard W. Elan, American Consul, American Embassy.

(Witness sworn through Interpreter.)

MISS SPIEGEL: I solemnly swear that the testimony I am about to give shall be the truth, the whole truth and nothing but the truth so help me God.

(Mr. Richard W. Elan thereupon appeared to leave the hearing room.)

MR. GALLINA: I am Mr. Cino Gallina, attorney for Mr. Dominique Orsini..

Today is the 24th of August, 1976, and it is approximately 11:45.

We are in the basement reception room of the American Embassy in London. And I am presently here to ask questions of a witness, Mr. Serge, with the assistance of an interpreter.

MRS. AMON: My name is Carol Amon. I am an Assistant United States Attorney for the Eastern District of New York representing the United States Government.

M A R I E (?) A PP O L I N E S E R G E , called as a witness, having been first duly sworn through the Interpreter, testified as follows:

DIRECT EXAMINATION

BY MR. GALLINA:

Q Mr. Serge, would you give us your full name, please?

A Marie Appoline.

Q what country are you a citizen?

A French.

Q And where were you born?

A In Paris.

Q And what is the date of your birth?

A 25th of November, 1943.

Q And where do you presently reside?

A In Dakar.

Q What is the address there?

A 5 Rue Kalmedy.

(Interpreter does not give spelling of proper name.)

Q How long have you resided in Dakar?

A Twenty-five years.

Q By the way, what languages do you speak?

A Only French and Senegalese language dialect.

Q You can recognize other languages, however?

A Yes.

Q Now, what is your present occupation?

A Company director.

Q And what business is the company involved in?

A It's a construction business.

Q And where is the construction projects taking place now?

A In Dakar or in the south --

Q In South Africa?

A Yes -- in the islands of Cape Verde.

(Interpreter does not give spelling.)

Q Where are they located?

A Next to Dakar.

Q I see.

Now, what is your educational level? Have you completed high school?

A No, not completely.

Q Did you finish -- did you go to the university?

A No.

Q But you have gone to high school.

THE INTERPRETER: He has not got his high school certificate.

Q Now, Mr. Serge, on the 25th of August,

approximately three o'clock in the morning did you have an occasion to observe any unusual circumstances?

A Yes.

Q Will you tell us what you viewed, please?

THE INTERPRETER: He went to see his brother-in-law in a clinic which is opposite a police station. And as he was coming out of the clinic he heard cries.

Q Now, what country and what city is this?

A In Dakar.

Q And what is the address?

A It's on the Rue d'Etionne, the doctor's.

(Interpreter does not give spelling)

Q Now, the doctor is your brother-in-law; is that correct?

THE INTERPRETER: His future brother-in-law.

Q And the clinic, do you know the name of this clinic?

A Casauz.

(Interpreter does not give spelling.)

Q That is a hospital?

A It is a private clinic.

Q I see.

Now, tell us what you saw and what you heard after you left the clinic?

A I heard cries from a person who didn't want to come out. He didn't want to come out.

THE INTERPRETER: He heard cries.

Q Well, where was this person at the time you heard his cries?

A He was on the steps of the police station.

Q And who else was present, if anybody?

A There were Africans -- African police.

Q Approximately how many?

A There were four next to the man. There were about -- six, more or less.

Q Six in addition to the man --

MR. GALLINA: Do you have that magazine article?

Q I show you this photograph on page 57 of the Newsweek article of August 16, 1976. It is a photograph in the middle of that page of three individuals.

Do you recognize anyone of these three as being present on that morning?

A I think that although there was a lot of muddle that maybe it was this man here in the center of the picture.

Q Does he look the same here as he did then?

A He was fatter. More strong.

Q More heavy than that?

A Yes.

MRS. AMON: May I see that, please?

MR. GALLINA: Yes (handing).

He pointed to the -- you can see he pointed to the person in the lower part of the photograph.

Q Did you see anybody or persons or anyone other than the Senegalese police?

A There was also a black car, a black American car with about three people, more or less, in the car.

Q I see. And what were the people doing in that car?

A There were two in the car and one who was talking, arguing with one of the police guards.

Q And what was he saying to the police?

THE INTERPRETER: He said he was telling him to make the man be quiet. And to take him to the airport.

MRS. AMON: I object to what the witness thinks unless you can establish that he heard what he was saying in the language in which he was speaking.

Q What language was the man speaking to the Senegalese police?

A In English.

MRS. AMON: And I object to what the witness

thinks and the witness' assumptions on that point as to what the individual was saying.

Q Did you hear the witness speak -- did you hear the individual that you described speak in French to anybody?

THE INTERPRETER: Yes, he heard the man say in French that he didn't want to come out. He wanted to stay. He didn't want to go.

Q No, I am talking about one of these individuals from the automobile.

A When he talked to the man who was outside the car he talked in English.

Q When -- the man who was speaking, Mr. Serge, the man from the automobile who was standing outside the automobile, who you say was speaking to one of the Senegalese police officers, you say you understood him or you think you heard him say to take them to the airport?

MRS. AMON: I object to that question as leading and on the same grounds I objected before.

A He spoke that in French to one of the police, the Senegalese police.

Q In other words, he said that in French to the Senegalese police?

A Yes.

Q All right, and what did the Senegalese police

officer say to him then?

A He said the policeman then told the other police to make the man be quiet, to come along, to make him be quiet, and to make him come with them.

Q Now, let's get this -- let's get all the particulars of what happened exactly. You say you came out of the clinic and you observed how many people on the street? Approximately.

A About fifteen. More or less fifteen.

Q How many were in uniforms of any kind?

A There were about six and four, ten in uniform.

Q And what kind of uniform was that?

A The Senegalese uniform.

Q And when you say Senegalese, the military or police?

A Police uniforms.

Q Now -- and the man that you pointed to on this page 57 in the lower part of the picture, how was he dressed, in uniform or in plainclothes?

THE INTERPRETER: He thinks he was dressed in a shirt and trousers.

Q I see. All right. Now, the black automobile, the American automobile, did you observe any distinguishing license plates or marks on the automobile?

A It was black and green.

THE INTERPRETER: He thinks that the license plate was green, and that he knows that the car was black.

Q All right, and the green license plate in Senegal, does that have any significance, that is, is it a diplomatic plate or an international plate, or --

A It is normally a diplomatic plate, license plate.

Q Did you notice from what country?

A No.

Q All right. Now the individuals you say that came from the automobile, how many were there?

A Which car?

Q The black American automobile.

A There were two inside -- there were two inside the car.

Q And the third person, did you see him, from inside the car?

A When I arrive he was just talking with the policeman.

Q All right, now, Mr. Orsini or this individual screaming and shouting. What was he saying?

A That he didn't want to go. That he wanted to

stay in Dakar.

Q And what were his words exactly?

A That he didn't want to leave Dakar, that he liked it there.

Q And did he speak -- in what language?

A He spoke in French.

Q And did he make any mention of any courts, or of any police, or any judges?

MRS. AMON: I will object at this time to the leading nature of Mr. Callina's questions.

Q (Continuing) Go on.

A Not while I was there.

Q Did -- you stated before that you then heard this one individual speak to one of the Senegalese police officers in French. And what did he say to this Senegalese police officer in French?

A From what I heard, because as the man is screaming, he told him to make the man be quiet and to take him to Europe, to the airport.

Q Now, did you hear this man speak in any other language to anybody else?

A To the car. He spoke to the car.

Q And in what language did he speak to the car?

THE INTERPRETER: He supposes in English.

Q Now, you didn't understand what he said. You just recognized -- did you recognize it as the English language?

THE INTERPRETER: He recognized English.

Q But you did not understand -- did you understand the substance of the words?

THE INTERPRETER: No, he didn't.

Q What happened then?

A They made him get into the car --

Q Made who get into the car?

A The man who didn't want to come in. They made him climb in by force.

The car left. The black American car left. And then everybody else left.

Q I see.

Now, the individual that you say there was force used on him, will you describe what they did to him?

A They pulled him by his shirt, by his hair, and things like that.

Q Did anybody strike him at any time with anything?

For once, yes.

Q How was he struck?

A When -- to make him get into the car they

pushed him in with force.

Q Did anybody ever hit him with their hands or any weapon?

A Only with the hands.

Q I see. Now, did the individuals from this automobile speak to any of the other policemen on the street?

A No, they didn't talk to anybody.

Q Just a conversation between the one and the other police?

A Yes.

Q Who was it that you say pulled Mr. Orsini by the hair and used force to shove him into the automobile?

A The Senegalese police.

Q The individuals in the car did not do that, though?

A No.

Q The individuals who were standing outside the car, did he then get in the automobile and drove away?

A Yes, he got into the black car.

Q Now, the -- did you ever overhear or listen to any conversation between the three persons in the automobile, the two persons in the automobile, and the person standing

outside the automobile, in any language other than French?

A Well, the man outside approached the car and talked to the two inside.

Q And that's when you heard him speak in English?

A Yes.

Q Oh, where did -- did you go to the airport to see anything?

A No.

Q Where did you go then?

THE INTERPRETER: He went back to some friends who were waiting for him.

Q How long would you say this whole episode that you viewed took?

A About between five and ten minutes.

Q Did the individual have any handcuffs or manacles on his hands?

MRS. AMON: Again I will object to the leading nature of that question.

A Yes.

Q Did you notice any type of dressing or bandages on his body, or arms or person?

MRS. AMON: The same objection as before.

A No.

MR. CALLINA: I don't have any questions further

at this point.

I think that it would be fair at this point for me to explain to him that you are counsel for the United States Government and that you are going to ask him some questions now about the same matters which I have questioned him already about, but that you don't represent Mr. Orsini; you represent the United States Government who is prosecuting Mr. Orsini.

MRS. AMON: Well, you can state that to the Interpreter.

MR. GALLINA: Will you tell him that, please (addressing Interpreter)?

CROSS-EXAMINATION

BY MRS. AMON:

Q Mr. Serge, I believe you testified that you are a director of a company that is located in Dakar? Is that correct?

A Yes.

Q And the name of that company is Covere?

(No spelling given)

A Covere, yes.

Q All right, now, were you employed or the director of that company at the time of these events you

testified about?

A No.

Q What were you doing at that time?

THE INTERPRETER: He was for a French Commission in Dakar. It's a corporation.

Q Well, what was your job? What did you do?

THE INTERPRETER: He was a Professor.

Q Now, Mr. Serge, I believe you testified that you do not have a high school education. Is that correct?

MR. GALLINA: I object. That is not what he testified to. It is a misstatement of facts. He testified he had not had a high school certificate, but he went to high school.

Q Did you graduate from high school?

A No.

Q But you are testifying now that you were a Professor at that time? Is that correct?

THE INTERPRETER: He was a ceramic professor, a teacher of ceramics.

Q Have you -- are you an architect, sir?

A No.

Q And you have never been employed as an architect? Is that correct?

THE INTERPRETER: His father.

Q Your father is an architect?

A He was.

Q Okay. And at the time of these events you were a ceramics professor, then; is that correct?

A Yes.

Q All right, now, I understand, Mr. Serge, that prior to this time on August 25 that you had never seen this man before that you identified in this picture; is that correct?

A No.

Q Did you know the name Dominique Orsini?

THE INTERPRETER: He had heard aboutit from the newspapers in Dakar.

Q Prior to this date you had heard of the name prior to these events that you testified about?

A Yes, I think so.

Q And what had you heard about Mr. Orsini?

A Everything. It was after --

THE INTERPRETER: He is mistaken -- after the events that he remembers hearing about it.

Q All right, now prior to these events that you testified about did you know Mr. Lucien Henriessey?

A Yes.

Q And how did you know Mr. Henriessey? What was

your relationship to him?

A I knew him because we were in the same school in Dakar.

Q All right. Were you friendly with Mr. Henriessey prior to these events?

A No, not particularly --

Q But he was an acquaintance of yours? Is that correct?

THE INTERPRETER: He knew him, but he was an acquaintance.

Q Did you know a Mr. Charles Waddy prior to the time that --

A No.

Q Did you know any member of Mr. Orsini's family?

A No.

Q All right. Now, Mr. Serge, you testified, I believe, that on August 25th that you were in the vicinity of this clinic and the police station at approximately three o'clock in the morning; is that correct?

A Yes.

Q And you say that you were there in the clinic to visit your future brother-in-law?

A Yes.

Q All right, now, was this just purely a social

visit to your brother-in-law on that occasion?

THE INTERPRETER: He had made an appointment for a meeting with him, and the doctor hadn't come. And he went to see what happened.

Q And when had you made your appointment for?

THE INTERPRETER: He said that about one o'clock, and if he hadn't been there at one he was going to go and pick him up. That was the --

Q This was at one o'clock in the morning?

THE INTERPRETER: He was supposed to meet him at about one o'clock and if he wasn't there they had agreed that Serge would go and pick him up.

Q And what was your purpose for meeting him at one o'clock in the morning?

A Because in Dakar you go on until three, four, five, or six in the morning socially.

(End of Videotape No. 1)

(Beginning of Videotape No. 2)

BY MRS. AMON:

Q Mr. Serge, you testified that you were supposed to meet your brother-in-law at one o'clock; is that correct?

A Yes (nodding).

Q And where were you supposed to meet him?

A In 15, which is a nightclub.

Q And you waited there two hours and he did not appear; is that correct?

THE INTERPRETER: He was just -- he was in a group so he didn't really pay attention to the exact time.

Q Well, it was at one o'clock he was supposed to meet him. There is no question about that, is that right?

A About one o'clock.

Q And two hours later you went to the clinic; is that right?

A Yes.

Q Was your brother working at the clinic at that time?

A He was doing an operation.

Q An operation in the clinic?

A Yes.

Q All right, where did you go, if anywhere, with your brother after these events that you witnessed?

A My brother-in-law didn't come because he is still working in the clinic.

Q All right, now, do you usually begin your social life at three o'clock in the morning in Senegal?

A Yes. We go from one place to another --

Q How many other times have you met your brother-in-law at three o'clock in the morning to go out?

A Very often.

Q Was this a usual habit of yours, to meet him at that hour? Is that correct?

A During holidays, yes.

Q What holiday was this?

A A school holiday.

Q Whose school holiday? Your school holiday?

A Yes.

Q All right. When was the last time before this occasion that you met him at three o'clock in the morning to go out?

A Because we go out quite often in Dakar -- we go out quite often -- I can't remember exactly.

Q Well, the week before, the day before, a month before?

A Maybe in the week before.

Q And now you had been at this No. 15 -- was that a nightclub?

A Yes.

Q And had you been drinking with these people that were there?

A Yes.

Q Had you been drinking a lot?

A No, never.

Q How much had you had to drink?

THE INTERPRETER: He can't say.

Q Can he estimate?

A One, two.

Q So in two hours' time you had two drinks? Is that all?

THE INTERPRETER: He said in the evening. During the whole evening.

Q And when did your evening begin?

THE INTERPRETER: First they went to a restaurant and then to a cinema. Afterwards they went to 15.

Q And during that entire time you had two drinks; is that all?

A Yes, more or less.

Q Now, could you describe this area where the police station is and the clinic; is it a busy area or a quiet street?

MR. CALLINA: Do you mean at that time of the morning, Miss Amon?

MRS. AMON: At that time.

Q (Continuing) At the time that you witnessed the

event?

A The clinic is along -- is on the right-hand side as you go down the road Quint and Doctez. And the police station is on the left.

(Interpreter does not give spelling.)

C All right, at that time in the morning were there a lot of other people around besides yourself?

A No, not many.

C And was it a well-lit area or a dark area?

A Medium.

C And how far away were you standing when you witnessed these events, Mr. Serge?

A He didn't -- I didn't stay in one place. I walked around.

C Well, how far away were you?

A It depended on the moment.

C Well, how close did you get to the situation at the time that you were closest to the situation?

A Five meters.

C All right, now, you testified, I believe, Mr. Serge, that you did not get a clear look at the man who was coming out of the police station; isthat correct?

A Yes.

C And I believe you testified that this person

that you identified in the picture, that you only think this to be the man; is that correct?

A Yes.

Q In other words, you are not positive that this is the man that you saw that night? Is that correct?

A No.

Q Now, has Mr. Gallina on a prior occasion shown you this photograph? Before today?

A Today.

Q Was the first time you saw this photograph just a few moments ago when Mr. Gallina showed it to you or had he showed it to you earlier today?

A No, just a few minutes ago.

Q When you were testifying and when I was sitting here?

THE INTERPRETER: When he was testifying.

Q And that is the first time that Mr. Gallina had ever shown you this photograph?

A He showed it to me here.

MR. GALLINA: Carol, I will state for the record now that I never showed him that photograph prior to the moment I showed it to him here in front of you.

Q That is your testimony, Mr. Serge; is that correct, that the first time that Mr. Gallina showed you this photograph was when we were here and our conversation was being recorded? Is that correct?

A No, before.

Q And when was that?

A Here.

Q All right, you have only been shown this photograph one time; is that correct?

A Yes.

Q All right, now, you know that the individual in question is named Dominique Orsini; is that correct?

A They said to me that he is Dominique Orsini.

Q All right, and that name appears under this photograph; is that correct, the name Orsini?

A Yes.

Q Now, Mr. Serge, you testified that these individuals who were taking the person you identified as Mr. Orsini out of the police station were the Senegalese police; is that correct, to your knowledge?

A Yes.

Q And that these people were dragging and pulling Mr. Orsini; is that correct?

A Yes.

Q Can you explain exactly what they were doing to Mr. Orsini?

A If he didn't want to go down the stairs, the others push him.

Q And these were the Senegalese police that were doing that? Is that correct?

A Yes.

Q Did you ever at any time see either the two individuals that you spoke of were in the black car, or the individual that you said stood outside of the black car, did you ever at any time see any of those individuals -- any of those individuals touch Mr. Orsini?

A No.

Q So the only people that on that occasion that you saw touch Mr. Orsini in any way were the Senegalese police; is that correct?

A Yes.

Q Now, the two individuals that you saw sitting in the car, can you describe those individuals?

A No.

Q You did not see them clearly?

A No.

Q You do not know, then, whether they were Frenchmen or Senegalese or Germans, for that matter, is that

correct?

A No.

Q And the person who was standing outside of the car, can you describe that individual?

A No, not really.

Q All right, so you are not able to give a description of that man, either; is that correct?

A No.

Q And you do not know whether that man was an American or a Frenchman, or an Englishman, or a German, do you?

A No.

Q And this car that you saw, Mr. Serge, what type of car was it? Can you tell us --

A Black American. That is all I can say.

Q You don't know the model or the type of car at all?

A No.

Q Well, what makes you say that it is an American car?

A That-you can recognize easily.

Q Well, how did you recognize that it was an American car?

A Because 90 per cent of the cars in Dakar are French, and, I mean, when one sees an American car --

Q Well, could you describe the car?

A A type of brake --

(Interpreter gives no spelling)

Q Well, could you explain further?

A (No response.)

Q Describe the size of the car.

A A big car.

Q How many doors?

THE INTERPRETER: He didn't look how many.

Q So you don't know whether it was a two-door car or a four-door car?

A In my opinion, there must have been four doors.

Q Well, do you know -- or do you remember, or do you not remember?

A If I saw the car in Dakar I could tell you if it was. At this moment I can't tell you.

Q You don't remember how many doors the car had? Is that correct?

A No.

Q Now, I believe you testified, Mr. Serge, that you observed a license plate on the car?

A Yes --

Q All right --

A Yes.

Q All right, and you indicated that this license plate was -- what colors again did you indicate that it was?

A Green.

Q Was there any other color on the license plate?

A No.

Q All right, did you notice any numbers on the license?

A No.

Q Now, you testified, I believe, Mr. Serge, that youassumed that this was a diplomatic plate; is that correct?

A No, because all of the green license plates in Dakar are diplomatic.

Q You know that for a fact?

A Yes.

Q You are absolutely sure of that?

A Yes.

Q Was there anything else about the plate that indicated to you that it was a diplomatic plate?

A No, I didn't pay attention. Normally, I would pay attentionto the number, but I didn't.

Q What color are the license plates in Dakar, the other cars?

A Black and white.

Q Have you ever seen green license plates from cars of any other country?

A Yes.

Q Have you ever seen cars in Senegal with green license plates from other countries?

A All Embassy cars have a green license plate.

Q No, but have you ever seen cars from any other countries that were in Senegal that had green license plates?

MR. GALLINA: One moment. I object to the form of the question. And, Mrs. Amon, I think that the confusion here is that he is answering you -- the car comes from other countries -- I think he is evidently answering that the diplomatic car comes from another country

MRS. AMON: No, I think my question was clear, Mr. Callina. I asked him if he had ever seen another --

THE WITNESS: Do you mean foreign cars?

Q That is right.

A Yes.

MRS. AMON: So I think the record is clear on that point, then. Do you agree, Mr. Gallina?

MR. GALLINA: No, I don't. I think your mistake is that he has answered that the Embassy cars have green license plates.

MRS. AMON: Well, you can clarify the question --

MR. GALLINA: -- that evidently came from other countries.

MRS. AMON: -- you can clarify the question, I think, on redirect, Mr. Gallina.

MR. GALLINA: Yes, I will.

BY MRS. AMON:

Q But --

MRS. AMON: I would object to any direction of the witness by Mr. Henriessey at this time.

BY MRS. AMON:

Q Now, Mr. Serge, you indicated that the Senegalese police forced this individual that you assume to be Mr. Orsini into a car; is that correct?

A Yes.

Q And was that the same black car that you thought to be an American car or was it a different car?

A He was put into a police car.

Q And was it a police van or a smaller car?

A A bigger one.

Q Now, you also testified, I believe, that the police were striking this individual and pushing him in the face; is that right?

A Yes.

Q And could you -- and from your viewpoint could you see that they were striking him with force, great force?

A I didn't look. I could see blows, I don't know.

Q Well, could you see how they were hitting him? Were they hitting him in the face?

A In the body.

Q And did you see anyone hit him in the face at all?

A No, I don't think so.

Q But you saw them strike him in the body -- in the top part of his body?

A I wasn't looking exactly --

Q Well, what exactly did you see, Mr. Serge?

A Someone who was being pushed, who was being hit.

Q Well, he was being pushed and he was being hit. Where was he being hit?

A I can't say exactly.

Q So you didn't observe it or you don't remember?

A I did observe but I can't say exactly where he was hit, the blows.

Q Now, have you ever at any time or has Mr. Gallina ever attempted to have you identify any of these people that you say were in the black car or the gentleman

standing outside the black car?

A No.

Q So you have never been shown photographs of anyone -- that effort has not been made by Mr. Gallina for you to make an identification? Is that correct?

A No.

Q And you do not think that you would be able to identify these men in any event, is that correct?

A No.

Q Now, Mr. Serge, after you witnessed these events on August 25th in the early morning what did you do after you witnessed these events?

A I returned to my friend.

Q Now, when for the first time did you tell anyone about what you saw?

A When I returned to the club.

Q And who did you tell about the events at that time?

A To everyone who was there.

Q All right. How did you meet Mr. Gallina and how did you come to tell Mr. Gallina about the events that you witnessed?

A It is Monsieur Henriessey during the course of the meal.

Q So the first person that you told was -- you told Mr. Henriessey during the course of the meal?

A Yes.

Q And through Mr. Henriessey you met Mr. Gallina; is that correct?

A Yes.

Q All right. Now when you told Mr. Henriessey of these events -- when was it that you told Mr. Henriessey of these events?

A In the month of December, January.

Q Of what year?

A 1975, '75-'76.

Q I mean how did you come to tell Mr. Henriessey about these events? Did you contact Mr. Henriessey or did Mr. Henriessey contact you?

A The person who had invited us had asked why he had come to Dakar -- asked Mr. Henriessey why he had come to Dakar.

Q Who was this person?

A Monsieur Tom Davargas, a restaurant owner.

(The interpreter does not give spelling.)

Q All right, will you continue?

A I talked about the story just like that and he said to me --

Q Who is he?

A Monsieur Henriessey.

Q Well, how did you meet Mr. Henriessey? What was your purposes for meeting with Mr. Henriessey and in telling him this story?

A Because we were invited to a restaurant by this person.

Q And was it purely a social visit at that time that you just happened to meet Mr. Henriessey on that occasion?

A We met because we had been invited. And I often go down there.

Q And this was a social visit with Mr. Henriessey at that time; is that correct?

A I met Mr. Henriessey there, but I had been invited by Mr. Davargas.

(Interpreter does not give spelling)

Q All right, were you there for a dinner party or were you there to specifically tell Mr. Henriessey about what had happened?

A I was there to eat. I was invited for dinner. And I met Mr. Henriessey over there.

Q And you had known him before this? Is that correct?

A Yes, of course.

Q Now, did Mr. Henriessey question you in any

way about Mr. Orsini, or did you just happen to tell him the story?

A He talked about the affair -- he talked about the business which had brought him to Dakar. And during the course of the dinner I talked about -- I told the story.

Q And so it was just by chance that you happened to meet Mr. Henriessey and tell him about this story? Is that correct?

A Yes.

Q All right. When did you learn for the first time, Mr. Serge, that the individual that you saw coming out of the police station -- when did you learn that that was Dominique Orsini?

A When we talked about the story he toldme that it could be Mr. Orsini.

Q All right, before that time you had no idea that the person that you had seen was Mr. Orsini; is that correct?

A No.

Q So it was just by this conversation with Mr. Henriessey that you thought this to be Mr. Orsini; is that right?

A Yes.

Q After you witnessed this event did you ever

tell anyone in authority about this, the French Consul or anyone else?

A No, not at all.

Q So the only people that you told were your friends; is that correct?

A Yes.

Q Did you learn after you had witnessed this event -- did you read anything about Mr. Orsini being arrested in Dakar?

A Yes.

Q And what did you read about it?

A I don't know. The whole article. I didn't make the connection between this story and the article.

Q Until you had this social meeting with Mr. Henriessey; is that right?

A No.

Q Now, Mr. Serge, how many times would you estimate that you had met with Mr. Gallina and discussed this case?

MR. GALLINA: Objection. The prior meetings of myself and Mr. Serge occurred only at the order of the Court on one prior occasion, and that was the time when the U.S. Attorney's Office could not get permission from the French Consul to appear --

MRS. AMON: Mr. Gallina --

MR. CALLINA: -- At that time the U.S. Attorney was present.

MRS. AMON: All right, Mr. Gallina, as I understand it, the Judge will rule on these objections. And at this point I would like for the witness to testify as opposed to yourself testifying in this manner.

BY MRS. AMON:

Q All right, Mr. Serge, could you --

(At this point a snapping of fingers was heard on the videosound tape at the far end of counsel table.)

MR. CALLINA: You need one more tape; is that right?

(End of Tape 2.)

(Beginning of Tape 3.)

BY MRS. AMON:

Q All right, Mr. Serge, the question I had asked before the break was if you could estimate how many times you had met with Mr. Callina and discussed the facts of this case?

A Twice.

Q And when was that?

A In March in Paris.

Q All right, did you also at that time in March

in Paris meet with Pierre Orsini?

A No, not at all in 1976.

Q Have you ever met Pierre Orsini?

A No.

Q All right, now, how many times have you met with Mr. Henriessey and discussed this situation with Mr. Henriessey?

A Once we talked about it and then he asked if I would like to witness -- to be a witness.

Q All right, so you discussed -- was it at that time at the dinner that you discussed this with Mr. Henriessey?

A No, the day afterwards.

Q And is that the only time that you have sat down and discussed the facts of the case with Mr. Henriessey?

A Yes.

Q Now, Mr. Serge, that article that Mr. Gallina showed you, the photographs that were in Newsweek Magazine, now did anyone read to you or discuss with you the subject of that story in which those pictures appeared?

A No.

Q Has anyone ever discussed with you a case by the name of Toscanino?

A No.

Q Now, I would just like to backtrack for a minute, Mr. Serge, with one question that I have with respect

to this diplomatic license plate, the green license plate. Is that the license plate of all diplomatic cars?

A Yes.

Q So for all different countries, is that correct?

A Yes, all countries.

Q All right. One other question with regard to that. Back to the situation again. The man that you saw standing outside the car you said that at one point you heard him speak in French?

A Yes.

Q And what did he say in French?

A Make him be quiet. Take him to Yos.

(Interpreter did not give spelling.)

Q All right, that is the only thing that you heard him say in French? Is that correct?

A That is all I heard.

Q All right, now, Mr. Serge, could you tell us who paid your expenses for your trip to London on this occasion?

A Mr. Henriessey for me -- not for Dakar. From Paris to London.

Q And who paid your expenses on the occasion that you went to Paris to testify, before I believe you said

in March?

A Me.

Q Mr. Henriessey did not pay your expenses at the time that you went to Paris?

A No (shaking head).

Q Were you staying in Paris then or did you travel from Dakar to Paris?

A I went from Dakar to Paris but not for that affair, for something else.

Q And no one paid your expenses? Mr. Henriessey did not pay your expenses on that occasion?

A No, only Paris-London, London-Paris.

Q Now, have you been paid any other money in connection with this case, either by Mr. Gallina, or by Mr. Henriessey, or by Mr. Orsini, and I say Dominique Orsini?

A No, not at all.

Q Were you ever paid any money by Pierre Orsini?

A No, never.

Q Now, Mr. Serge, would you be willing to come to the United States of America and testify about these matters?

A No, I don't think so. It depends.

Q If your expenses were paid by Mr. Gallina to come to the United States, would you come to the United States

and testify in this matter?

A It depends on my work.

Q Has Mr. Callina ever asked you if you would be willing to come to the United States of America and testify?

A Yes, he did. And I said no because I had too much work.

Q But you would be willing to come to the United States at a time in which you did not have -- or, as you say, you did not have too much work?

A Yes, why not?

Q Have you ever been to the United States before?

A No, never.

Q All right, would you be willing to come to the United States in September and testify in this case?

A I think not.

Q Well, when would you know?

A When I return to Dakar.

Q You would be able to know whether you could come and testify at that time; is that correct?

A It depends on the work that I have in Dakar.

Q All right, just this one last question, Mr. Serge: How much money would you estimate that you have been paid for your expenses in this case?

A Nothing.

Q Well, you testified before that you have been paid for your expenses.

A No, I didn't say that.

Q Well, you were paid for your expenses coming from Paris to London; is that correct?

A No, they gave me a ticket. They didn't pay me.

Q So the only thing that you have received is an airline ticket; is that correct?

A Only a ticket.

Q And you have never received any other money other than the ticket?

A No.

MRS. AMON: I have no further questions.

REDIRECT EXAMINATION

BY MR. GALLINA:

Q Just the -- since we are on the point of the expenses -- in your stay in Paris previously, no money was given to you; is that correct?

A No.

Q But your hotel was paid for, was it not?

A Yes, part of it.

Q Part of it was paid by whom?

A Mr. Henriessey.

Q And was that the part that you apportioned

towards your stay for the testimony?

A I should have stayed one day but I had to stay two more days. So the extra days Mr. Henriessey paid.

Q Now, when you were in Paris and met me in March of '76, did you meet also an Assistant U.S. Attorney by the name of David DePetris?

A Yes.

Q And that was the same occasion on which I spoke to you about the case; was it not?

A Yes.

Q Now, the individual that you eventually saw returned to the American car, who you also heard in French give directions to the Senegalese police officer, was he a white person or a black person?

A White.

Q Was he young or was he old?

A I didn't notice exactly.

Q Now, for how long would you say he spoke in English to the individuals who were inside the American automobile?

A I didn't pay attention. The conversation was as I passed.

Q I see. In other words, you don't know how long he was speaking to them in English?

A No, because I didn't pay attention to this.

Q Did he talk to an open window of the car or through an open door?

A I think he was across the window.

Q You didn't hear him speak in German, did you?

A No, I know German.

Q You didn't hear him speak in Chinese or some other language, did you?

A No.

Q You are sure it was English?

A Yes.

Q Now, this automobile, this American automobile, you say you saw him enter the automobile, is that correct?

A Yes.

Q And when Mr. Orsini who we now -- this individual who was put in the police van --

MR. GALLINA: Withdrawn. I will take the question out.

Q This individual who you saw -- who you heard speak in English and who also spoke in French to the Senegalese policeman and gave him these directions about keeping the prisoner quiet and taking him to the airport, after he gave those directions what did the police do?

A The police put him into the car.

Q Into what car?

A The police car.

Q And what happened to the police car, then?

A They all went, all three of them. They left.

Q What do you mean all three of them?

A Do you mean to say -- the third man who was outside the car left.

Q Where did he go?

A I don't know.

Q Well, did he get in the American car?

A Yes.

Q And did the police van or the police car in which the prisoner was put, and did the American car drive off together?

MRS. AMON: I will object again to the leading nature of the question.

A The black car left first. And the police car left later.

Q How much later would you say that the police car left after the black car left? When we speak of the black car you mean the black American car? Is that correct?

A Yes.

Q So when we speak of the American car we mean the car that had the green diplomatic plates?

A Yes.

Q Now, that car drove off first; is that correct?

A Yes.

Q And how soon afterwards would you say the police car left?

A They left almost one after the other.

Q Did they go in the same direction or different directions?

A I went up the Rue Jones and --

(Interpreter does not give spelling of streets.)

Q I see. Is Dakar a city as large as, say, London?

A No, not at all.

Q It is a very small city?

A Very, very small.

Q You say at the time that this -- during this period of time you were an instructor in ceramics; is that correct?

A Yes.

Q Where were you teaching?

A For the Senegalese Asoombidieu.

(The Interpreter gave no spelling.)

Q What is that?

A It is an art design center of the Senegalese.

Q All right, your brother-in-law was a doctor; is that correct?

A Yes.

Q And what were his hours of employment at this clinic?

A He was often at night as well as during the day on duty.

Q Oh, I see. He would work at night?

A Yes, even now.

Q Was he working at night that night?

A No, not especially. When there is a sick -- or a patient he comes.

Q I see. I have one more question.

When I spoke to you in Paris last March about your coming to New York to testify did you not tell me that you would not come?

A Yes.

Q And did you not tell me that you would not come not only for the reason that you expressed here today, did you not also tell me that you were frightened to come to the United States?

MRS. AMON: I would object again to the leading nature of that question.

A I would not like to travel.

Q Well, did you tell me that you were frightened? Yes or no.

A Yes.

Q Did you ever tell that to Mr. Henriessey?

A Yes.

Q Has anything happened to you in Senegal which has added to your fright of testifying in either the United States or in Senegal?

A I do not want there to be any repercussions on my situation in Dakar.

Q Have you been threatened in Senegal?

A No, but -- no, but I know of a black politician.

Q Did the police ever visit you? Did the police ever contact you and tell you that they didn't like it that you are cooperating?

MRS. AMON: Again I will object to the leading nature of the question.

A No.

MR. GALLINA: I have no further questions.

MRS. AMON: I have nothing further.

MR. GALLINA: Thank you.

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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, :

-against- :

DOMINIQUE ORSINI, : 74-CR-492

Defendant. :

----------x

United States Courthouse
Brooklyn, New York

September 20, 1976
10:00 o'clock a.m.

B e f o r e :

HONORABLE HENRY BRAMWELL: U.S.D.J.

PERRY AUERBACH
ACTING OFFICIAL COURT REPORTER

(14)

Appearances:

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United States Attorney
For the Eastern District of New York

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Assistant U.S. Attorney

GINO E. GALLINA, ESQ.
and
JOEL BRENNER, ESQ.

Attorneys for Defendant Orsini

EDWARD SMITH, ESQ.

BY: RICHARD M. COOPER, ESQ.
Attorney for Newsweek Magazine

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THE COURT: We are going to take the motion to quash. That is the first motion we will take.

Good morning. This is the motion to quash concerning Anthony Marro, and you are?

MR. SMITH: May I just say, your Honor, myname is Edward Smith. I am admitted to practice before the Bar of this Court,and I would respectfully request for purposes of this hearing the admission of Mr. Richard Cooper who is a member of the Bar of the District of Columbia and the Supreme Court.

THE COURT: We will be happy to have Mr. Cooper. Mr. Cooper is admitted for purposes of this proceeding. The Court grants the application. We would be happy to have you.

MR. SMITH: Thank you, your HOnor.

THE COURT: Thank you, Mr. Cooper.

MR. GALLINA: Your Honor--

THE COURT: Do you want Mr. Orsini up for this?

MR. GALLINA: I believe he is up here.

THE COURT: We are to have him brought out.

MR. GALLINA: I understand that there is an interpreter available downstairs, your Honor.

MR. DE PETRIS: Your Honor, the position of the United States Attorney's office has been in retained counsel cases the defense counsel is to provide the

interpreter. Now, on very brief proceedings, the Government, when the defense counsels have not brought interpreters, we have to for the convenience of the Court provide an interpreter. However,it's my understanding that Mr. Orsini is going to testify today, and that involves a substantial period of time for an interpreter. So I would assume if we find an interpreter that Mr. Gallina will pay for the services.

MR. GALLINA: That's right, your Honor.

THE COURT: I'm going to take this Iberia matter now, and I'm going to put them over until 2:00 o'clock.

(Whereupon a short recess was taken.)

THE COURT: Swear in the interpreter.

(Whereupon the interpreter was sworn.)

THE CLERK: State your name for the Court Reporter, please.

THE INTERPRETER: Libya Clancy.

THE COURT: Ready to proceed, Mr. Cooper?

MR. GALLINA: Your Honor, if I may, just as a preamble to the motion that your Honor has decided to first take into consideration,that the motion to quash a subpoena that I have served upon one of the members of the Newsweek staff. I wish your Honor to know that the service of the subpoenas was a very very difficult task. The only way we were able to serve the one of

the two reporters that we did finally serve was through a ruse by infiltrating the office with a female who supposedly was to see this man. They avoided service in every fashion possible. Instead of allowing us to bring them to this Court as they should have.

The second reporter has not been able to be reached. He avoided our service every way possible by running up and down the stairways, and which I think in establishment of this nature that conduct should not be participated in. The basic issue, I imagine that your Honor wishes to get into first --

MR. COOPER: May I respond to that?

THE COURT: Yes, Mr. Cooper, you may.

MR. COOPER: I take very strenuous objection to Mr. Gallina's comments. I have represented Newsweek and the Washington Post, which are both part of the Washington Post Company in numerous cases which subpoenas have been served on reporters, and it is the policy of the Company not to evade process, indeed not to make technical objections to service of subpoenas. We accept subpoenas. We litigated on the merits in Court. Mr. Marro has been in Washington since approximately the 10th of August. The statement made in Mr. Brenner's charges are incorrect. He has not in any way avoided service. He is available at Newsweek offices in Washington on most

business days for a good part of the day. I received Mr. Gallina's papers on Saturday, and I have not had an opportunity to talk with Mr. Axthelm about this. It is the policy of the Company to respond to subpoenas.

We are here to litigate this subpoena on its merits. To my knowledge we have not in any way tried to evade service.

MR. GALLINA: Then the private investigators hired at arm's length by my office mustbe lying to me. They have gone to great particulars in the manner in which they have explained the circumstances to me. I am sure that these two men will be more than willing to testify under oath as to the events that have been taking place over a period, I believe, approximately of, I would say a week to a week and a half on a daily 24 hour basis in trying to make this service.

THE COURT: I think the motion which is before the Court will determine the position of the parties, and I think that the Court may get to it. Aside from whatever problems Mr. Gallina or his process servers may have had in connection with this matter. I think we have an issue before the Court which the Court should and will address itself to, and I think we can proceed with the motion to quash, and Mr. Cooper, of course, is representing Mr. Marro in this particular

case.

You may proceed, Mr. Cooper.

MR. COOPER: Thank you, your Honor. Your Honor, we submit that any subpoena to a newsman to reveal the identity of a confidential source is a most serious matter. Its seriousness is underlined by two recent events which have been widely reported in the press. In California, four newsmen were jailed for refusal to reveal the source of secret Grand Jury testimony. They were subsequently released because the Court found as a fact that further incarceration would not coerce a revelation of the sources. Of course nothing like the facts of this case is presented here. Three thousand miles away in Washington, D.C. this past Wednesday, CBS newsman, Daniel Schorr, was warned numerous times that he faced possible prosecution for contempt for refusing to reveal a confidential source of his, and he respectfully refused to answer the questions put to him by the House Ethics Committee, and at the time there were no votes in the Committee to proceed against him. We submit that the instant subpoena now before the Court is totally unjustified. It is unjustified under the normal laws governing subpoenas as to materiality and relevance. It is unjustified under the Federal Common Law, which we submit grants Mr. Marro a privilege to

refuse to reveal a confidential source, and it is unjustified under the first amendment to the Constitution of the United States.

Let me turn first simply to the subpoena question without regard to Mr. Marro's common law and Constitutional privileges. The attempt to justify the instant subpoena is made at pages 2 and 3 of the memorandum in opposition submitted by Mr. Gallina, and I submit that that attempt makes it absolutely clear that what we have here is a simple fishing expedition.

The memorandum states, if we can establish through these sources and/or others we learn of from these sources that the American Government as a general policy of making bribes or threats or giving some benefit or applying some pressure to foreign governments to turn over suspected drug dealers, and/or this happened in Senegal of the direct proof we now lack.

The memorandum goes on to say that Mr. Marro's source "may have been aware of the case" referring to the Orsini case, and it goes on to say that even if they did not know of Orsini's case, if they know of other cases that may have been of some benefit. Also, "if they know of the Orsini abduction, additional sources might be located."

It's clearly that this subpoena is not intended

to obtain evidence for this Court, it is to obtain information for Mr. Gallina. We made in several stages no representation of any likelihood that any real and general admissible evidence will be obtained. There is all, as I understand it, coming into the case at this stage, pursuant to an order by this Court, authorizing a hearing on a Toscanino motion, and such a motion has nothing to do with bribery or with payments, but with gross mistreatment of a person brought into the United States against his will, which gross mistreatment must be shown was by or on behalf of representatives of the United States Government, and there is no suggestion anywhere in the papers that Mr. Marro or indeed his sources have any information bearing on those allegations, which Mr. Orsini must sustain if he is to obtain any relief under Toscanino.

(Continued on next page)

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MR. COOPER: Let us look at the two statements about which this subpoena seeks further information. The first statement appearing in the Newsweek article concerns pressure put on the government of Paraguay by the government of the United States. It seems to me that it's the routine conduct of American foreign policy. There's no suggestion of any bribery. There's no suggestion of any corruption. There's no suggestion of any payment to any individuals. There's no suggestion of any wrongdoing of any kind, and all of this relates to the case of a Mr. Ricord and Paraguay. Not to the case of Mr. Orsini, and not to Senegal. What possible relevance this has to this proceeding before this Court totally escapes me.

The second statement also does not concern Mr. Orsini's case. It's a very general statement attributed to a government source that in some cases, not in all cases, not as a general matter, but in some cases, some payment, either in cash or in kind, has been made to people who have -- or governments that have cooperated in expelling persons whom the United States government wanted to bring to the United States for trial. There is no suggestion there of a bribery, of bribery of any individual or of corruption. There's no suggestion there that it is a general policy of the

United States to engage in such practices universally. There's no reference to Mr. Orsini's case.

Once again, the materiality and the relevance of this quotation totally escapes me, and as a matter of law, of subpoenas we submit, that this is an improper subpoena, because it does not seek information that is material or indeed even relevant to the issues which this Court must decide under Toscanino.

I would now turn to the common law question. We submit that under the Baker case in the Second Circuit, the common law of the United States has adopted has adopted the shield law which has been enacted by the state of New York, and that shield grants the Mr. Marro of privilege to withhold the identification of confidential news sources.

Now, there is a statement in Mr. Brenner's affidavit that he believes, apparently he's not certain, he believes that Mr. Axthelem told him that Mr. Marro's sources for his, the story that appeared in Newsweek was in Washington. Mr. Marro's affidavit establishes that he did not tell Mr. Axthelem the identification of the specific confidential sources for the specific statements that are referred to in the subpoena. So Mr. Axthelem was in no position to give Mr. Brenner or anyone else any information about Mr. Marro's confiden-

tial sources.

There was numerous sources for the story, confidential and on the record, and some of them were in Washington. Some of them are identified in the article itself, as being in Washington, and it's by no means clear that Mr. Axthelem understood that he was giving Mr. Brenner information on the confidential sources, for the two statements referred to in the subpoena.

The record ought to be clear that Mr. Marro is the only one who knows the identity of his confidential sources, and Mr. Axthelem does not know who or where they are located. Nor does Mr. Brenner.

The analysis under the New York shield law, we submit, is a simple one. The shield law applies to the facts of this case as demonstrated in our memorandum, and it gives Mr. Marro a privilege. There is no need for any balancing. If any balancing is required, we submit that the balancing is clear. Mr. Marro is seeking to protect confidential sources, which is the heart of the New York shield statute. Mr. Orsini's need for the information supplied by that could be applied by Mr. Marro is miniscule or insignificant. He is not even seeking a cover on the issue of guilt or innocence. It's on a wholly collateral issue, and not under the law in Toscanino. There's no assistance to

the law in the argument that bribery in connection with other factors would be enough to justify any relief from an indictment.

If we turn to the constitutional aspects of it, the case is even stronger, because there the interests that must be shown to override a newsman's claim of privilege under Mr. Justice Powell's opinion in the Brandberg case, or under Baker or under any of the other cases that we have cited in our brief, and I would refer specifically to the Brown case in Virginia and the St. Peter's case in Vermont, which were all criminal cases involving subpoenas by defendant. The interest that must be shown is an immediate substantial and subordinating one, and that kind of interest has not been shown here. Indeed, I think this subpoena is almost frivolous, and for that reason, I ask the Court to quash it.

THE COURT: Thank you, Mr. Cooper. Mr. Gallina, would you care to respond?

MR. GALLINA: The attempt to join the defendant Orsini's application here to this Court with the case involving the West Coast reporters, and Mr. Schorr, to make it one big causal episode, is not fair. I am sure that I speak not only for myself, but for Mr. Orsini in saying that we want freedom of the press, and

we understand what the First Amendment means and what it does preserve for our country.

However, there is that balancing which is required when constitutional rights which may be in conflict with each other in the Constitution because we can't expect to anticipate everything in life, comes into play, and the Court must make a ruling and must balance these rights.

So, it's totally unjustified for Newsweek to come in here today and attempt to place Mr. Orsini's motions here on the skirts of these other matters that are taking place in Congress and in West Coast courts.

The argument has been turned to the issue of relevancy. Before I get into whether or not there is relevancy required by the facts of the case in Orsini, let me point out ot Your Honor that in Newsweek article on page 57, you had one reading in quotes by Counsel for Newsweek, and then you had one paraphrasing by Counsel. The part that he paraphrased is the important part, and may I read for you in quote the next to the last paragraph in the left-hand column on page 57; "The record case also marked one of the last formal drug extraditions. Agents soon decided that 'expulsion' was all that it means could be secured more efficiently and more cheaply."

Now, those words, I am sure, carefully chosen by a very talented and very experienced reporter. Then he quotes, "clearly we have paid for some of these people," says one Federal official, it might not have been a specific quid pro quo, but we could give X dollars or X cases of ammunition to officials who helped get these people on planes," and then right next to that paragraph almost touches it, is a picture of my client, Mr. Orsini, there it is, Chiappe, Orsini and Russo in custody, "Who's breaking the law?"

Now, if Newsweek wasn't talking about Mr. Orsini, I am holding peanuts in my hand.

Now, insofar as the relevancy of the Newsweek's statements, and the issue as to whether Mr. Axthelem is also a relevant witness, I am sure Mr. Brenner will come before the Court and state to you what he has stated to me. Mr. Axthelem, in his statement, told him that Mr. Marro revealed to him the names of the sources, and that these sources were located in Washington.

Now, the facts of the case here in and of itself, documents submitted to your Honor, are sufficient to show the relevancy of the information possessed by these reporters. It's very clear that there was an attempt to extradite Mr. Orsini from Senegal.

That the attempt to extradite failed. That on

the morning or the afternoon of the 23rd of August, the Court, the Appellate Court in Senegal, in Dakar, ruled that Mr. Orsini was not subject to extradition or expulsion; that Mr. Orsini, as he was picking up his private documents and his personal clothing, having been released from the prison and going on over to the police headquarters to pick up these documents, and this clothing, was then arrested illegally and against the Court's order, and held incommunicado from his attorney, from the French Consul, from any person who decides to see him, and in fact wasn't acknowledged by any person or proper authority who had him in custody that he was in custody, and then he then was thrown in an American plane heading for the United States around 5 o'clock in the morning, drugged after having been beaten, or in some ways abused, and thrown on this plane.

Now, it would be like listening to the argument of the demented to say that circumstantially something was done to cause him to come onto that plane, to that airplane, if somebody would argue against that. He didn't just happen to appear on an American airplane 5 o'clock in the morning. It just wasn't a trick of fate. There was forces that move here that caused a government official to cooperate with American officials against their own court orders and to lie and cheat

while doing it.

Now, couple this together with the information possessed by these reporters, clearly possessed by these reporters, and they hint to it there might not have been a specific quid pro quo, but we helped these people on the planes.

Clearly, Americans are that what I related to your Honor previously during our discussion on the record before the Court that I have been told by the attorneys from Senegal and the attorneys from France that these things have happened, that there was some sort of payoff in this situation to make this occur.

THE COURT: Basically the fact that they have happened is your position. To believe that it happened in this case.

MR. GALLINA: The fact that happened is like the sun coming up.

THE COURT: Not like the sun coming up that I saw.

MR. GALLINA: The fact that the Court ruled that he must be released, the Court ruled that he could not be turned over to the American authorities, is very clear happening that he's on his way to --

THE COURT: That is an interpretation of yours.

MR. GALLINA: I think your Honor will see that

the government this week has stipulated to certain documents. One of the documents is the Court ruling.

THE COURT: I don't know that the Government has stipulated to anything yet. But if and when they do, then we will, the Court will see what the position is at that point. I don't know that it's been done, and I don't even know -- Well, don't get off on a tangent. Clear up what's before the Court rather than going into some other area. Finish this area.

MR. GALLINA: I am talking about the relevancy. It flows from the fact, your Honor.

THE COURT: Has the Government stipulated?

MR. GALLINA: Yes.

THE COURT: When?

MR. GALLINA: This week.

MR. DEPETRIS: There has been no stipulation yet. That's one of the matters to be taken up this morning.

THE COURT: That's a matter to be taken up with Mr. Gallina with the issue before the Court.

MR. DEPETRIS: That was one of the issues to be taken up before the Court this morning.

THE COURT: That's a matter to be taken up.

MR. GALLINA: Your Honor, I personally had a conversation with Mr. Depetris.

THE COURT: I know there was a possibility that they would stipulate, but they haven't done it yet. I am telling you that. It hasn't been done yet.

MR. GALLINA: Well --

MR. DEPETRIS: That's one of the matters that is supposed to come on today, your Honor.

THE COURT: To be taken up?

MR. DEPETRIS: Yes, your Honor.

MR. GALLINA: Well, your Honor, I will make an offer of proof at this time.

MR. DEPETRIS: Your Honor, if I could just state for the moment in terms of the documents which Mr. Gallina has requested stipulations on, none of these documents indicate that Mr. Orsini was tortured or beaten by the Senegalese or by American agents at their request or by American agents. Under the Toscanino and Louhon, one of the cases that followed, one of the criteria for the establishment of a granting of a Toscanino type motion, that the defendant was tortured or beaten by American agents, or at the request of the American agents, now there has been not one iota of proof to establish that, and it's the Government's position because of that, and because of the Newsweek article, in no way has anything to do with that subject with respect to Mr. Orsini, with respect to Senegal or

with respect to anyone else that the motion to quash the subpoena should be granted on the ground of relevancy.

MR. GALLINA: Well, your Honor --

THE COURT: Yes.

MR. GALLINA: He have made a number of objections, approximately five motions to your Honor, one of which is Mr. Orsini being able to testify today.

THE COURT: That's something else. We are here on this motion to quash, and that's what the Court is going to do now. I will take that up in due course.

MR. GALLINA: I thought that we did digress for a moment.

As an offer of proof for the purposes of this motion, so that I can show the relevancy, I have here before me the decision of the Supreme Court, of accusation dated the 23rd of August, 1965, in the matter of Dominic Orsini, and the last page it says it declares the temporary arrest of Orsini be set aside, and orders that he be set free, and orders that his documents be returned to him, and that's the objects seized from him and placed under seal be returned to him, and orders the execution of this decree, and it is signed by the District Attorney of the Court of Appeals, and signed with the signature apparently by the Clerk, and at least

for the purposes of this motion here, I would ask it be marked for identification.

THE COURT: Mark it for identification on behalf of Mr. Gallina.

(continued on next page)

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MR. GALLINA: That's the only copy I have (indicating).

I will make another copy for you.

Oh, here is another copy. That's in French.

THE CLERK: Eight-page document number 18702-A marked Defendant's Exhibit A for identification.

(Document referred to was received and marked Defendant's Exhibit A for identification.)

MR. GALLINA: I have shown a copy -- I have shown the original decision in French, your Honor, to counsel for Newsweek.

It leads me to this comment, your Honor, until we have a finishing of the examination of that, it is a very peculiar position that I find that the Government is in here in the sense it is supporting, and I am sure if things go badly for Newsweek, will come in even stronger with its support for the quashing of the subpoena.at the very moment that the Government attempts to use its powers to cause other press members to reveal matters before a Grand Jury, et cetera, yet here wants to join with the reporters, when it suits itself, to quash a subpoena to cover up governmental -- alleged governmental irregularities or illegalities.

MR. DE PETRIS: Your Honor, if I can just respond to that, Mr. Gallina's statements as to what these

witnesses would testify to is simply a fishing expedition. There is nothing to support his allegations in the Newsweek article. There is nothing in the article concerning torture by anyone, which is what you need under Toscanino and Lujan.

Now, the Government's position with respect to the motion to quash is that the subpoena for Mr. Marro to testify is totally irrelevant to the Toscanino proceeding which is before the Court because there is nothing in the article concerning torture. As to the relevancy, the Government supports the motion to quash.

MR. GALLINA: Your Honor, the Government misses two essential points, one, is that one of the requirements of Toscanino in the law in this district is that there be a protest from the Government in question, and it is something in the sentence required. There cannot be protest when certain agents of another Government are corrupted not to protest, to violate their own laws, to violate what their laws require them to do, and what their constitution requires them to do, and what their courts have ruled them to do.

Now I can understand how the American government in certain cases wants to force reporters to reveal certain information in the Grand Jury, but at other times wants to cooperate with the reporters in

suppressing such information as here. Obviously, as we argue from the evidence that we will be able to present, your Honor, or make offers of proof to your Honor, and the evidence that has flowed so far from the testimony, the Government here would not like such information to come out. Otherwise they wouldn't take this position and join with Newsweek because they would have nothing to hide and therefore what would they care as to what came out from the reporters --

MR. COOPER: Your Honor, I believe --

THE COURT: I will give you a chance, Mr. Cooper.

MR. COOPER: Well, as to the two points that were just made, the protest point, that if the United States Government went in and corrupted some individual in a foreign country, I do not see how that would prevent that foreign country from protesting. Indeed that very act might lead to a protest.

The other point about the inconsistency of the government's position, let me just say this, that the Department of Justice has very elaborate regulations on the issuance of subpoenaes by the Department to newsmen. And there is a very involved procedure and a very high standard which is enforced by the Attorney General personally. Any subpoena to a newsman must be

approved personally by the Attorney General. And it is my understanding that U.S. Attorney's Offices around the country have not always had smooth sailing in obtaining that approval from the Attorney General.

So the Government, although we do not always agree with them when they issue subpoenas, is in general careful. And defense counsel are not subject to any such procedure.

THE COURT: It is not something that is taken lightly.

MR. COOPER: That is correct, your Honor.

MR. GALLINA: As your Honor will recall from this case, your Honor had reviewed subpoenas in this case very carefully and had not allowed them to be issued willy-nilly.

THE COURT: There have been definite instructions to you on that particular aspect.

MR. GALLINA: That is correct, your Honor, on many occasions. And I am sure that your governing in this case has been just as careful as the Attorney General's has been.

May I answer that point. We are not attempting to obtain the information from the reporters for the basic issue of the torture but for the fact that the cooperation, and the guidance, and the strict hand of

the Americans over the -- showing that they had control of the situation and control of those agents, which became their agents in Senegal, which resulted in torture and beatings. But remember that if we can show, which I think the circumstantial evidence shows, and which we may be able to get direct evidence in support of the circumstantial evidence which we argue reason shouts out is the correct position, is that if the Americans did in some way -- the American Government in some fashion did corrupt, or guide, or controlled certain agents in Senegal to do what the Courts in Senegal ruled they could not do, then in effect these people were the agents of the Americans and in effect all that they did became the conduct of the Americans.

And the lack of protest, which is the final touch, is also the result of the American corruption, or the American payment, or as the reporters put it, the American quid pro quo.

THE COURT: Yes, Mr. Cooper.

MR. COOPER: A copule of final points, your Honor, Mr. Gallina says that what he is interested in is U.S. control over the responsibility for the actions of the Senegalese. There is nothing to suggest that either Mr. Marro or his sources have any information on that subject. And Mr. Marro did not report on the

Orisini case. The Newsweek article did not write about it except in one sentence, and Mr. Orisini happened to be in the picture with Mr. Chiappe, whose case is discussed at some length in the article.

Mr. Marro has stated in his affidavit that he did not discuss the Orisini case with the sources whose identity Mr. Gallina seeks. So there is no reason to go after Mr. Marro here. His sources may know something about it. Thousands of people walking the street may know sometning about it. That is no reason to overturn Mr. Marro's common-law Constitutional privilege.

MR. GALLINA: Well, just a brief reply to that, your Honor, it is evidence in the article itself, the tenor of the article, the persons who are featured in the article, being Orisini, Ricaud, Chiappe, Russo, that he spoke to officials, persons in our government, concerning these individuals, and got this very statement from them. Clearly we have paid for some of these people, quote-unquote. Now, if he decided not to ask particularly which one of these people the agent of the American government was speaking of, or maybe they were speaking only of Mr. Orisini; that we won't know until we inquire.

Now, to get to the two issues of law which I

believe we have handled quite extensively in our memorandum of law to your Honor, I just wish to emphasize that the balancing here is the issue at hand. We are balancing the rights of the press here to freedom of the press and to all the citizens of the United States have access to a free press, and the right of a defendant to have his rights to a fair trial preserved. That seems like a very noble expression, but if we look at it in this situation, because in essence what Mr. Orisini is saying is that the American government, which is nothing but a body of people who hold in trust laws and the rights to govern, rights we the people, all the people in this country, is using illegal methods, illegal conduct in corrupt ways to bribe people to prosecute him. This is something I believe on balance must have greater respect than the mere preservation of those who are in Government who have admitted that they have done these illegal things.

THE COURT: Well, this has been your position in connection with this case, Mr. Gallina. But the Court is not sure that you have proved that. That is the defendant's position and that is something that you have been asserting. But I am not sure that that has been the proof.

For the record, Mr. Cooper, perhaps we should have Mr. Marro articulate his position, if you will bring him up.

MR. GALLINA: Your Honor, may I just take care of one housekeeping thing?

In view of the fact that Mr. Cooper has been so magnanimous in saying that Mr. Marro and Mr. Axthelm have been available for service --

THE COURT: Mr. Marro is going to come right up now.

MR. GALLINA: -- I am sure he will also provide Mr. Axthelm for service of process or take service of process.

THE COURT: Well, let's do what we have before us instead of having Mr. Cooper --

MR. COOPER: I have not been in communication with Mr. Axthelm.

I will state to the Court that it has been our position in previous cases that our law firm has accepted service on behalf of reporters close to Newsweek --

THE COURT: I won't ask you to do that at this time. You can check with your firm and see what your position is.

Bring up Mr. Marro and then we can get his

position on the record.

MR. GALLINA: Your Honor, may I point out just for the record that Mr. Brenner has indicated to me that he asked Mr. Smith to take service of process for these two reporters. And Mr. Smith, who is from the legal department of Newsweek, had refused.

THE COURT: Well, Mr. Cooper will check that position and will advise you further.

What is his position?

MR. COOPER: I would like to check with Mr. Axthelm, your Honor, and I have not received authorization.

THE COURT: Yes, I will permit you to do that.

Swear in Mr. Marro.

A N T H O N Y M A R R O , called as a witness, having been first duly sworn by the Clerk of the Court, took the stand and testified as follows:

THE CLERK: Will you state and spell your name for the record please?

THE WITNESS: Anthony Marro, M-a-r-r-o.

THE COURT: Just have him articulate his position for the record if you will, Mr. Cooper.

MR. COOPER On whether he will -- on his assertion of privilege?

THE COURT: Yes, his assertion of privilege.

DIRECT EXAMINATION

BY MR. COOPER:

Q Mr. Marro, have you been served with a subpoena in this case?

A I have.

Q And are you prepared to reveal the identity of the confidential sources of the statements referred to in the subpoena?

A No, I am not.

Q Why not?

A Well, because I obtained this information under a promise of confidentiality.

I have worked this way for many years.

I personally do not believe this is of any help or relevance to Mr. Orisini. But that is not for me to decide.

But even if it were, I obtained this information under a guarantee that I would not reveal the sources of it. And it is a pledge I intend to abide by.

THE COURT: Anything further, Mr. Cooper?

MR. COOPER: Does that satisfy your Honor?

THE COURT: Yes.

THE WITNESS: May I add a note about the service of the subpoena.

THE COURT: Yes, if you will.

THE WITNESS: First, I did not receive a phone call from associate counsel. I return all my phone calls. If I had a message I would have returned it. I receive between fifteen and twenty calls a day and I return all.

The second thing is I was not on vacation until September 7th. I was back in the office either the 10th or 11th of August. I can check on the calendar. I was in every day except Sunday. Every time the phone rings, if anyone wants me they can get me. I do return to the office. I am the only Marro in the Washington phone book. I walk to work every morning. I come out of my house. There is no problem serving a subpoena. I would accept it. There is absolutely no problem there. I could not resist it. I didn't try to evade and I did not.

THE COURT: Thank you.

Anything further on the motion to quash?

MR. GALLINA: No, your Honor, except the documents that I have presumed the Government was going to stipulate to. They would be examined of course.

THE COURT: I don't know if the Government is going to stipulate to them or not. And that is an issue

that the Court will have to decide.

On the motion to quash, anything further, Mr. Cooper?

MR. COOPER: No, your Honor.

THE COURT: All right, tne decisionis reserved.

Now, at 12 o'clock the Chief Judge has a meeting of the Judges in his Chambers. After that the Judges will have lunch. And at 2 o'clock the Court will return and will have considered and gone over the matter in full detail and will have a decision for the attorneys at that time. At 2 o'clock there will be a decision.

MR. COOPER: Your Honor, may I state one thing that did occur to me, if I may.

THE COURT: Surely.

MR. COOPER: The question has arisen as to the location of Mr. Marro's sources, and perhaps I can offer something further on that, which Mr. Marro can confirm if he wants. I am sorry this just occurred to me. For the first statement referred to in the subpoena there are several confidential sources some of whom were here interviewed in New York.

For the second statement Mr. Marro cannot state whether the source was in New York or Washington

because that would tend to reveal it.

THE COURT: Anything further, Mr. Gallina?

MR. GALLINA: Nothing further.

THE COURT: All right, decision reserved. 2 o'clock.

(Thereupon, at 12:05 o'clock p.m. an adjournment was taken to 2 o'clock p.m.)

September 20, 1976

2 P. M.

THE COURT: In United States of America versus Dominique Orsini, on the motion to quash -- do you want Mr. Orsini up here?

MR. GALLINA: I can waive that, your Honor.

THE COURT: All right.

Now I will read the decision to you.

"This matter comes before the Court on the motion of Newsweek Magazine Reporter Anthony Marro to quash a subpoena duces tecum issued upon the application of the defendant, Dominique Orsini, which seeks to compel that newsman to disclose the identity of certain confidential sources from when he obtained information subsequently published and disseminated to the general public in the August 16, 1976 edition of Newsweek Magazine.

"The aforementioned news article concerned the methods used by the Drug Enforcement Administration, an agency of the federal government, to obtain physical control and custody of suspected international drug dealers for the express purpose of returning such persons to the United States for trial for alleged violations of United States narcotics laws.

"Specifically, Mr. Orsini seeks documents and testimony concerning two subject matters: First, the identity of " 'U. S. Officials [who] privately tell the story' of how the government of Paraguay was threatened with the loss of American aid unless it extradicted one Auguste Ricorde", and Second, the identity of " 'one federal official who said 'clearly, we have paid for some of these people. It might not have been a specific quid pro quo, but we would give X dollars or X cases of ammunition to officials who helped get these people on planes.'"

"It would seem to be the position of Mr. Orsini that the information sought in the instant subpoena would somehow prove of significant value in the determination of whether or not he was subjected to acts of "gross mistreatment perpetrated by or at the direction of representatives of the United States Government." As indicated in this Court's order of October 24, 1975, such allegations if substantiated, would require the dismissal of the instant Indictment filed against the defendant, as mandated by United States v. Toscanino, 500 F.2d 267 (2d Cir.1974), United States ex rel Lujan v. Gengler, 510 F.2d 62 (2d Cir. 1975), and United States v. Rafael Lira, 515 F.2d 68 (2d Cir. 1975).

obvious irrelevancy and immateriality of the information sought by the defendant to the issue raised by the Toscanino Hearing. The Court agrees with, and incorporates into its Decision, the persuasive reasoning of Mr. Cooper on the question of relevancy and materiality.

"Second, while this Court recognizes that the press has developed the argument that the First Amendment stands as an absolute prohibition against any official abridgement of the press, which in its view includes absolute protection of journalists against forced disclosure of their sources, we find this interpretation contrary to the weight of authority. See Branzburg v. Hayes, 408 U. S. 665 (1972). This Court is of the opinion that there exists no absolute rule of privilege protecting newsmen from disclosure of confidential sources. Rather, that what is required is a case by case evaluation and balancing of the legitimate competing interests of the newsman's claim to First Amendment protection against disclosure of his sources, as against the defendant's claim to a fair trial as guarantee by the Sixth Amendment.

"However, in the instant case, it is clean that the balance of interests weighs decidedly in favor of protecting the confidentiality of

"Mr. Marro contends that the instant subpoena should be quashed on the following three grounds: First, that the information it seeks is immaterial and irrelevant to the Toscanino evidentiary hearing authorized by this Court's order of October 24, 1975; Second, that the information sought is privileged under New York's Newsman's Shield Law, Section 79-H of the Civil Rights Law, and under Article I, Section 8 of the Constitution of the State of New York, as both are incorporated into the federal common law; and Third, that the information sought is privileged under the First Amendment to the Constitution of the United States.

"After careful consideration of all the motion papaers, memoranda of law, and supporting affidavits submitted to it by the respective parties, and after oral argument, this Court is of the opinion that the subpoena duces tecum issued to Mr. Marro should and must be quashed, under the circumstances presented in the instant case. First, it is patently clear that the subject matter sought in the subpoena bears no reasonable relationship to the issue of gross mistreatiment of Mr. Orsini by or at the direction of American Officials. Counsel for Mr. Marro has ably argued in motion papers and in oral argument, the

Mr. Marro's sources, inasmuch as the information sought is wholly irrelevant and immaterial to the Toscanino issue now before this Court.

"Accordingly, on the grounds of irrelevancy and immateriality, as well as upon the grounds of First Amendment protection, the subpoena duces tecum issued to Mr. Marro is hereby quashed.

"It is so Ordered."

MR. COOPER: Thank you, your Honor.

THE COURT: You are welcomed, Mr. Cooper.

You can settle an order on notice, Mr. Cooper, is that all right?

MR. COOPER: Yes, sir.

THE COURT: Thank you.

MR. GALLINA: Your Honor, just before counsel leaves, may I just make one statement.

I intend, as your Honor understands, to make an application to have the defendant Orsini testify as to --

THE COURT: That will be this afternoon.

MR. GALLINA: That is correct.

THE COURT: The Court is going to take care of that this afternoon, I am going to grant it.

MR. GALLINA: Thank you, your Honor.

As your Honor will hear, he will

testify that there were Americans who participated in the various acts against him. I will then renew my application for a disclosure through testimony of Mr. Marro on the grounds that the evidence to be ascertained from Mr. Marro and others is relevant to show direct or agency participation by the United States in this gross mistreatmentof the defendant. If your Honor will consider that that testimony is forthcoming at this point, we may save an additional trip of counsel back here, and that is that together with this evidence you now have, direct evidence of mistreatment by Senegalese and Americans, and Senegalese at the request of Americans.

THE COURT: Well, it is through the Court that you are being allowed to bring in Mr. Orsini --

MR. GALLINA: I understand.

THE COURT: Actually you have rested on the Toscanino hearing which you had.

MR. GALLINA: Well, your Honor, --

THE COURT: You are asking the Court to open up that hearing?

MR. GALLINA: That is correct.

THE COURT: For the purposes of allowing Mr. Orsini to testify, and since it is the defendant, I have through about it and it is my intention to

permit that.

Now if you wish to renew the motion you have just made at the close of Mr. Orsini's testimony, you have every privilege of doing that.

MR. GALLINA: All right,thank you you. Honor.

MR. COOPER: If I may just say a word, if your Honor pleases, as I think it is already clear and is reflected in your opinion, Mr. Marro will have nothing -- neither Mr. Marro nor his sources would have nothing to contribute, as far as we know from the record before the Court, concerning how Mr. Orsini was treated in Senegal or concerning how any American officials were involved in Senegal. That issue, that subject matter did not come up in Mr. Marro's conversations with the sources and Mr. Marro has no information on it.

MR. GALLINA: Perhaps I am not explaining the point clearly enough, I had not said that the Senegalese were paid to do this by the Americans --

THE COURT: You have explained it clearly, it has been months that we have been having this motion now going on, the Court is fairly clear on what the issue is.

Thank you.

All right.

MR. COOPER: Thank you.

THE COURT: We will make copies of this and give you copies.

Thank you.

We will take a short recess.

(A ten minute recess was taken.)

THE CLERK: United States of America versus Dominique Orsini, defendant's motion to permit the introduction of videotape, et cetera.

MR. GALLINA: Would you put down that Ms. Libya Clancey has been sworn in as interpreter for Mr. Orsini.

THE COURT: Now, on the motion permitting the introduction of videotape deposition of Father LeClef and for an order permitting the taking of deposition of associate.

Now, yes, on that motion Mr. Gallina

MR. GALLINA: Your Honor, I believe that I have somewhat succinctly laid out the arguments in the motion papers. However if your Honor wishes to, I have with me a paper recording, a videotape recording of my, shall we call it interview or onesided deposition of Father LeClef which went on for about an hour and a half or two hours. I believe that, that in itself, is living proof of the value and the relevancy of this priest's testimony. He asserted very

explicitly that not only did he, three or four times a week have occasion to sit down and visit with Mr. Orsini where Mr. Orsini would have occasion to utilize his French with Father LeClef who came from Belgium originally, but that also because of their proximity he would see Mr. Orsini three to four times a day coming and going at his home, and there was no question in his mind as a priest that Dominique Orsini could not possibly have been in Buenos Aires in those months in question.

Father LeClef went through a history of his background, which is very very impressive, and his demeanor and manner of speaking and his forthrightedness are all things which I think your Honor should listen to and appreciate and measure against my application.

As I must indicate to your Honor, and I think the Government will bear me out, Argentina is a very very difficult country to communicate in. The real terrible problem of the telephones from this country to Argentina and to set up a telephone call from the town of Valle Hermosa or from the city of Cordoba is a very very difficult thing. I was supposed to speak to Mr. DePetris from the city of Cordoba, which has about 800,000 people, and I could not make the call for about 24 hours, and I went to the airport

where the exchange was located to try to just call Mr. DePetris; when I got there, I saw an area where the telephone mechanism was which was about the size of the one in my office, and with one gentlemen sitting there in a sweater managing the whole telephone network from Cordoba to Buenos Aires.

He said to me, "I will put you on the list."

I said to him, "I am on the list."

He said, "I will put you back on the list for six or eight hours."

And when the six or eight hours passed, I sat there in the airport waiting to get that call out and he said it will still be another six or eight hours, "the phones have broken down between here and Buenos Aires." One could not use the telephones to communicate with witnesses and as for myself it was impossible to get a hold of Mr. Cosa on my first trip. I knew of his existence but on the first application that I made to your Honor I couldn't say that I had spoken to him personally, I was only able to speak to him personally on this last trip to Valle Hermosa, and there it was that I found out his great value to the defense. He also, because of the fact that he was a real estate broker, or what I would call

a real estate broker, in addition to being a business-man who ran a resort, a resort hotel in the town, and because of his proximity of being almost next door to the defendant could also say explicitly that he saw the defendant every day during the period in question, so therefore the defendant could not possibly have been present in Buenos Aires during that period.

I do think that in the exercise of judgment, Mr. DePetris should have come to Valle Hermosa. If I had seen any troops and if I had seen any types of precautions being taken against guerillas, so to speak, and the only precautions I saw were in Buenos Aires where the precautions were intensive, but when I reached Cordoba there was just no evidence of troops anywhere in the province, and when I was at Valle Hermosa, well, it is just a sleepy little town which I understand has one policeman who works somewhat on part time.

I do think upon reflection that the government should have come, in any case the government could have protected its agent adequately by having its own --

THE COURT: One policeman wouldn't be much protection

MR. GALLINA: I think Americans know they have

had escorts on other occasions such as --

THE COURT: Who has had escorts?

MR. GALLINA: I know of a case --

THE COURT: Which man in what case.

MR. GALLINA: In the defendant Chiappe case, he was picked up in Argentina fairly near the city of Cordoba and also in a small town called LaFalda, and at the time he was arrested, there were Americans present and the Americans were escorted by the federal police, by Argentine Federal Police.

There is no reason why for this deposition arrangements could not have been made for the Argentine Federal Police if Mr. DePetris thought there was some problem and needed to be protected in that fashion. I certainly was able to travel freely and --

THE COURT: You know, you are not a Government Official --

MR. GALLINA: I think that just the opposite would be true. The fear of the populus now is not from so-called "guerillas," the fear is mostly from what I think Mr. DePetris called adequately and appropriately the so-called "death squads," which are really right wing militants, pro-government vigilante groups, who go aroung executing or punishing members

of the former government, defunct government who had committed some sort of political outrage, and these are the people who are being trust up and suddenly appearing at en masse assasinations.

THE COURT: All right.

I will hear Mr. DePetris because I know there is another side.

MR. DE PETRIS: I would like to respond to several of the comments which Mr. Gallina has made.

Number one, I don't claim to know, who is responsible for all of the deaths that have occured in Argentina since the military coup several months ago. I have been advised that the terrorists activities in Buenos Aires and in several provinces in the country of Argentina have been at a very very high level. The terrorists, as I indicated in previous appearances before your Honor concerning this matter, the terrorists kidnapped an American consular official in Cordoba approximately a year ago and he was tortured, he was beaten, and he was subsequently executed and returned to the American Consulate in Cordoba. I was told by the American Embassy in Buenos Aires, and I had advised Mr. Gallina's office, I believe Mr. Brenner prior to leaving for Argentina, that I had been told by the DEA and by the American

Embassy in Buenos Aires that the situation in Cordoba was very tenuous for American officials, that the embassy would advise against my going, and in fact said that it would be unsafe for any American official to travel to the province of Cordoba because of the terrorists activities.

Now in terms of Father LeClef, I advised Mr. Gallina and I advised Mr. Brenner that the government would consider substituting another witness for Father LeClef if that other witness would come to Buenos Aires, even though it was not in the Court's Order because of the fact that the government -- well because of the fact that I was not going to travel and would not travel to the province of Cordoba. For that reason I felt that it might be in everyone's interest to substitute another witness for Father LeClef. I might also say that one of the witnesses which your Honor ordered to be deposed, and I don't recall the individual's name, but one of the witnesses who was supposed to be deposed refused to come to the American Embassy to testify. I understand he was in Buenos Aires but he refused to come to the Embassy. At any rate, he was not deposed, although we were there and ready and willing to have him deposed.

(Continued on the following page)

Orsini
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(Mr. Simon following Mr. Karr as Reporter)

MR. DE PETRIS: But I had indicated that I would be willing to substitute someone for Father LeClef if Father LeClef could not come to Buenos Aires.

I indicated that to Mr. Gallina. And I waited in theAmerican Embassy on Friday. I stayed there until approximately 7:00 o'clock.

I checked out of the hotel at approximately 8:30 on Friday night, a quarter of nine, to make a 10:00 o'clock flight from Buenos Aires back to New York.

And I received no telephone call from Mr. Gallina.

I checked with my hotel and I checked with the messages at the Embassy before I left.

I felt that to just to wait around at Buenos Aires on some indefinite type of situation as the depositions, it did not appear to be necessary since I hadn't heard from Mr. Gallina.

Now, the fact that he was unable to get a telephone call through from Cordoba, I wasn't aware of that, but at any rate I left at approximately 10:00 o'clock Friday night for an overnight flight which arrived in NLw York about some time early Saturday morning, 6:00 in the morning.

Now, it seems we have been to Buenos Aires once,

Mr. Gallina had an opportunity while we were there for several days to obtain other witnesses in Buenos Aires.

I think the Court has been more than indulgent in considering the numerous requests for depositions in many different countries in connection with United States against Dominique or Orisini both on the Toscanino issue and on the issue of his semi-alibi defense.

I would oppose the granting of any additional depositions.

Further I would oppose the use of the -- the one-sided questioning of Father LeClef by Mr. Gallina-- in other words oppose the use at trial of that particular in effect statement, I assume, by Father LeClef to a Mr. Gallina.

So the Government's deposition is that it would oppose the further depositions in this matter. We have taken the depositions of two individuals in Buenos Aires. There was an opportunity to depose an additional witness or two in Buenos Aires. That wasn't done. And I think that to again to travel to Argentina for the purpose for taking depositions is unwarranted. And the Government opposes such application.

THE COURT: Thank you, Mr. DePetris.

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Mr. Gallina, do you have anything further?

MR. GALLINA: Yes, your Honor. Let me point out that it was my understanding now when I left for England to take the deposition there, that Mr. DePetris would be going to Cordoba. And I understand also at that time he had not had the recommendations of the Embassy of the problems that the Embassy suggested to him in Cordoba.

It was then because of your absence that we couldn't bring --

THE COURT: It may have been in my absence, but I will have to say that the Court granted just about everything you asked for --

MR. GALLINA: No, we could not bring this --

THE COURT: Before you went out, before you were leaving for this trip --

MR. GALLINA: No, in your Honor's absence an unanticipated problem arose that Mr. DePetris could not go to Cordoba.

THE COURTG: When he was advised that it was dangerous and againsthis personal safety to go to Cordoba, I mean that decision is as something that even if the Court should have been advise of it I wouldn't have given him an order telling him to go there.

Mr. GALLINA: Your Honor, there is a legation there and I think since we do have legation officials there, that we could have sent -- Mr. DePetris could have gone in the same way that the legation officials are now protected --

MR. DEPETRIS: Your Honor, there is no American consul in Cordoba. That consul was closed after the American consular official was executed last June.

MR. GALLINA: I didn't understand that. I didn't know that, your Honor.

THE COURT: You didn't go back to pay a friendly visit to see how things were?

MR. GALLINA: No -- to do my citizens' duty like Benjamin Franklin? No, your Honor -- I am a bit distracted -- on my return from Cordoba, I arrived on Saturday, and I didn't bring any additional witnesses with me.

But I believe that if we had been able to remain a couple of extra days and I had been able to communicate with Mr. DePetris we could probably have deposed somebody else. But as it was, I was left with no choice, and I came back to the United States myself.

The Government tried to extend itself to help you under the circumstances but evidently that didn't work out either.

MR. GALLINA: Well, to be gracious, your Honor, I would say that the Government did extend itself, but they did say they would extend themselves until Saturday morning. And I did come back Saturday morning and the Government was gone Saturday morning.

THE COURT: Well, on the motion, on the motion by the defendant for an order permitting the introduction of the videotape deposition of Father Simon LeClef at the trial of this case after an order permitting the taking of the deposition of one Carlos Sosa in Argentina, this motion is denied.

The parties may settle an order on notice to that effect.

MR. GALLINA: If your Honor may appreciate one factor -- I understand your Honor will not reverse the order -- but for the record, you must recall, that I wasn't told about the change of the alibi dates from 1970 to 1971 until after I had submitted the original affidavits to your Honor requesting depositions of certain witnesses and before your Honor ordered -- in other words the change came after that. I would of course have looked for witnesses for the other date and emphasized the necessity for those witnesses if I had been made aware of the change of dates beforehand. I think if your Honor will reflect upon that change

on the Government's part, a change of its own witness' testimony from 1970 to March and April of 1971, the reasonableness of our request, that we be able to depose other witnesses we then sought and found, because of this change of dates, would appear to be warranted at this time. I think that that is something that can't be held against the defendant. It can only be held against the Government.

THE COURT: Is that in connection wiht the same motion?

MR. GALLINA: That is correct. In other words Mr. Sosa is particularly a witness for the 1971 date because it was somewhat in the time of the late fall or early winter of1970 that Mr. Orisini became friends with or became friendly with, or familiar with a Mr. Sosa. So that the value of a Mr. Sosa as a witness and of a specific overt act now becomes paramount not because of any lack of diligence on the part of the defendant but because of the lack of exactitude of the part of the Government's witness --

MR. DEPETRIS: Are you finished?

MR. GALLINA: Yes.

MR. DEPETRIS: Your Honor, the Government provided Mr. Gallina and Mr. Brenner with several times and places of transactions or meetings which were

narcotics related over and above the Court's order in terms of discovery and disclosure prior to trial because of the semi-pseudo alibi defense that Mr. Gallina was attempting to put forward, and I must note that Mr. Gallina has not referred to any of the other particular overt acts that the Government alleges were committed by Mr. Orisini during the course of the conspiracy in terms of the pseudo-alibi defense.

I might add, your Honor --

MR. GALINA: Well, I would say --

MR. DEPETRIS: -- I might add, your Honor, that when Mr. Gallina was advised of the -- of costs the indictment contained this particular overt act in Martinez, Argentina, this meeting between Mr. Orisini and Mr. Mario, Mr. Krimka, and a Mr. Banderes, and Mr. Gallina was advised that this was an approximate date. The Government did not pin itself down to a particular date because the witness could not pin himself down to a particular date.

In preparing the case for trial and in discussing the events in terms of times of year, the temperature, the weather, and things like that, it appeared that the time period may have been instead of November, or October, or December of 1970, I believe, may have been March, or April of 1971.

Now, with respect to Father LeClef, Father LeClef, Mr. Gallina was going to use as a witness right from the beginning.

With respect to Mr. Sosa, I don't know whether Mr. Sosa was one of the individuals who Mr. Gallina originally requested? I recall he requested 12 or 13 people to be deposed in Argentina.

Was Mr. Sosa one of the original people --

MR. GALLINA: No, he was not. He was not one of the original persons.

I did not understand the value of this witness until after I was able to speak to him particularly myself.

Your Honor --

(continued next page)

MR. DE PETRIS: Let me just point out one other thing, your Honor, Mr. Gallina's office was advised while he was in Argentina of these additional factors, these additional overacts. Mr. Brenner was advised and said that he was dying to be in telephonic communication with Mr. Gallina concerning these particular overacts and as to the times and dates. And he was advised as to the change while he was in Argentina. This was not when we went down for the deposition but when he was there previously. Mr. Gallina I believe has been there two or three times. Though Mr. Gallina had this information while he was in Argentina, and it is my understanding that he not only was in Buenos Aires on an occasion but was in Cordoba.

MR. GALLINA: Your Honor, the fact is that that date was never changed. I was in possession of the Grand Jury minutes through our own discovery in Senegal. But Mr. Banderis testified very specifically about the date being in October 1970. We had the Government's indictment as of being in October 1970. We had to do, I believe, an affidavit by Mr. Banderis as to October 1970. The date was never changed -- and Mr. Brenner is here to confirm that -- the date was never changed until after your Honor -- had submitted

to your Honor all of the matter that I could bring to your Honor and the two witnesses and as to what they would say. It was only after your Honor ordered and after everything had happened that I then went to Buenos Aires for a second time and came across Mr. Sosa and discovered him as a very important witness.

Now, it is to no fault of the defendant sir, and to no fault of mine. Neither his counsel nor the defendant has failed with any lack of diligence to prepare his defense.

Now for one to cite --

THE COURT: But you knew it prior to this last trip to Argentina.

MR. GALLINA: Yes, of course, but I couldn't communicate with the people until I could get down there. And I presumed that the same witnesses that I was going to speak to would help us out in that matter. I never expected that Mr. Sosa would become such a valuable witness or that Father LeClef could say even more particularly about these dates --

THE COURT: Until last year the Court has been very indulgent with you --

MR. GALLINA: Well, your Honor --

THE COURT: I have given you many opportunities

to develop this case on behalf of the defendant. And this is something you seem to feel that there can be a continuance of this --

MR. GALLINA: No your Honor.

THE COURT: This case should have been tried.

MR. GALLINA: In the interest of justice, your Honor -- in the interest of justice, because of the nature of this case, the nature of the distance of the witnesses involved, the fact that the whole case should be tried not here but in Argentina --

THE COURT: Should have been tried --

MR. GALLINA: It should have been tried in Argentina.

THE COURT: In Argentina?

MR. GALLINA: In Argentina your Honor. This country, I am sure, could have prevailed upon --

THE COURT: You go down there --

MR. GALLINA: No, I am sure that the prosecution of Mr. Orsini could have been pursued under Argentine law just as well as under American law.

MR. DE PETRIS: Your Honor, I think we are getting a little off the track --

THE COURT: Yes, we are getting off the track.

MR. GALLINA: But the fact is that there is a defense that was not available because of the fact

that the government had mislead the defendant and had mislead his counsel.

There can't be a mistake as to a date between October 1970 and March and April of 1970. It is only after I submitted an affidavit indicating to the Court for the first time and to the prosecution that we had an alibi defense for October 1970 that they did the switches on us. And is obvious why there was a switch in Mr. Banderis' testimony. And I imagine it went something like this: Now they have witnesses saying it didn't happen --

THE COURT: Well, I am sure there were problems. I don't know what the problems were. This is not a new case. It is an old case. It was an old case when I came into this court.

MR. GALLINA: But it was not old when the witnesses testified or gave affidavits.

MR. DE PETRIS: There was approximately four years between the time of the events and the time of the testimony in the Grand Jury.

MR. GALLINA: Well, the testimony in the Grand Jury was July 24, 1974.

MR. DE PETRIS: That is correct.

MR. GALLINA: And of the testimony -- if the event took place in March or April of 1971 it was a

little over two and a half years.

THE COURT: So, Mr. Gallina, what is your motion again?

MR. GALLINA: To depose Mr. Sosa.

MR. DE PETRIS: Can I just say one more thing, your Honor?

By a letter dated July 12 of this year I advised Mr. Gallina in writing of the various additional overt acts and of the witness indicating that the testimony took place -- that the transaction took place March or April of '71 rather than October of 1970 --

THE COURT: When did you advise him of that?

MR. DE PETRIS: By letter dated July 12th of this year.

However, it was prior to that letter being written that I advised Mr. Brenner orally by telephone, I believe, and also one day in my office of these facts. But the purpose of the letter was --

THE COURT: That was in the early part of July you did that?

MR. DE PETRIS: That is correct.

MR. GALLINA: But, your Honor, you had already issued an order. I had already discovered certain witnesses for a date over six or eight months before

then. I had no opportunity to even think to look for witnesses for the following year. I had no opportunity to make a discovery viz-a-viz the telephone into this town which only has about 40 telephones in the whole town. There is just no way of doing an investigation from here to Valle Hermosa about 11,000 miles away on the telephone. I waited until I got down there. And while I was there I ran into this other witness which is a very critical witness.

It is not our fault, it is the government's fault. In fact, the government should pay for the trip and it should pay for the deposition and for all the work and the travel entailed in it. It is their problem at this point, not mine, that they changed the dates. They had plenty of time to discover from thier witnesses as to the date.

It is very peculiar that they suddenly changed dates when we find an alibi for a certain date.

Now why should we be penalized for them subsequent to their changing the dates on us and going out and finding a witness.

THE COURT: Well, with the time you have had to prepare this trial, the Court does not feel you have been penalized.

MR. GALLINA: But I am penalized if I am told that I am to defend against one charge and then in the twelfth hour I am supposed to prepare against another charge.

And I do, within a period of a month find another witness. I come back to the Court and I say, your Honor, that we want to question that witness. He is very critical as to those dates.

We put them at the same time --

THE COURT: The motion is denied --

MR. GALLINA: Your Honor, the benefit would be this, we could then at the same time question Father LeClef --

THE COURT: The motion is denied.

MR. GALLINA: Now, we have --

THE COURT: Then your next motion is what.

MR. GALLINA: We have, I believe, a motion to have the minutes of Mr. Serge accepted into evidence as a part of the Toscanino hearing.

MR. DE PETRIS: Your Honor, that was the witness who was allegedly going to testify. He saw Mr. Orisini being beaten and tortured by the Americans or by Sengalese at the request of the Americans.

THE COURT: That is the deposition?

MR. DE PETRIS: What is the deposition of

Mr. Serge.

THE COURT: That will be accepted as part of the record of this hearing.

MR. BRENNER: And there was a videotape.

MR. DE PETRIS: Apparently we may have it.

THE COURT: All right.

MR. GALLINA: I have the stipulations. We have given to the prosecution, the documents --

MR. DE PETRIS: One moment.

MR. GALLINA: -- copies of documents that I understand that they are willing to stipulate as being accurate translations or copies of originals in English or documents which are relevant to the defendant Orsini's motion viz-a-viz the Toscanino.

MR. DE PETRIS: Your Honor, I am not stipulating to the relevancy of any of these documents because I do not particularly see the relevancy because they have nothing to do with meetings, or torture, or anything like that.

So as far as the relevancy is concerned, I would object to it. Other than that I would stipulate to the accuracy of the translations or at least approximate accuracy.

THE COURT: You do not oppose the introduction?

MR. DE PETRIS: Other than on the ground of

relevancy -- in other words, I am not going to require a witness from Interpol to come here and testify, or a witness from Pan-American to come here and testify.

But I would submit it that in none of those documents have any relevancy in terms of torture or beatings, which is the issue before the court.

THE COURT: Yes.

MR. GALLINA: The first document is a covering letter and a telegram from Interpol Washington on the 31st of July 1975.

MR. BRENNER: Do you have it?

MR. GALLINA: No, it is not in here (indicating).

THE COURT: Mr. Gallina, before we get the documents, we will have the clerk mark the deposition.

MR. BRENNER: Your Honor, I filed the original of that deposition with the court.

THE COURT: It is filed?

MR. BRENNER: Some weeks ago.

THE COURT: If it is filed, all right.

MR. BRENNER: And I served a copy on Mr. DePetris

THE COURT: All right, thank you, Mr. Brenner.

(Continued on the following page)

MR. GALLINA: All right, your Honor, the first document -- do you want to mark these separately --

MR. DEPETRIS: You probably want to mark them individually.

MR. GALLINA: The first document is a telegram, your Honor, from Interpol Washington of the 31st of July 1975. It has a Berlitz translation service number in the upper righthand corner of 18853-J, page 2.

THE CLERK: One document Number 18853-J marked Defense Exhibit B as in Benjamin for identification.

(Document referred to being a telegram from Interpol Washington of the 31st of July 1975 referred to as received and marked as Defendants Exhibit B as in Benjamin for identification.)

MR. GALLINA: Your Honor, the next document is an Interpol Washington telegram of August 7, 1975. It has a Berlitz translation service number in the upper righthand corner of 19046.

THE COURT: Mark it on behalf of the defendant.

THE CLERK; Document Number 19046 marked as Defense Exhibit C for identification.

(Document referred to being an Interpol Washington telegram of August 7, 1975 referred to

was received and marked Defendant's Exhibit C as in Charlie for identification.)

MR. GALLINA: The third document is a telegram from Interpol Dakkar to Interpol Washington and Interpol Paris of the 8th of August 1975 and contains an Berlitz translation service number of 18853-J, page 3, in the righthand corner.

THE COURT: Mark it on behalf of the defendant.

THE CLERK: One document number 18853-J marked Defense Exhibit D as in Daniel for identification.

(Document referred to being a telegram from Interpol Dakkar to Interpol Washington and Interpol Paris of the 8th of August 1975 was referred to and received and marked Defendants' Exhbit D as in Daniel for identification.)

MR. GALLINA: The next document is a telegram Interpol Washington of 8 August 1975 to Dakkar Criminal Police Administration and contains a Berlitz translation service page number 219046.

THE COURT: Mark it on behalf of the defendant.

MR. DEPETRIS: Where does it say that it is to Dakkar?

MR. GALLINA: There (indicating).

MR. DEPETRIS: It says Dakkar?

MR. GALLINA: Yes.

MR. DEPETRIS: How do you know?

MR. GALLINA: I know. We know this is the telegram. You will see it referred to in there --

MR. DEPETRIS: Other than on the grounds of relevancy I have no objection to the offer of the document. I would simply point out that the document no where says "Dakkar".

MR. GALLINA: In the original here we didn't put the Telex numbers. But in the original it says Telex Washington with the numbers. And it says Interpol Dakkar.

MR. DEPETRIS: It is not that one.

MR. GALLINA: Yes it is. This is the one. It is the same one.

MR. DEPETRIS: No.

MR. GALLINA: Yes. This is the one that refers to it.

MR. DEPETRIS: It is in English.

MR. GALLINA: This is the English version of it here. It refers to it. Number 16 refers to it.

MR. DEPETRIS: No.

MR. GALLINA: This is it.

MR. DEPETRIS: Simply in terms of what apparently is going to be offered as Defendant's Exhibit E as in Ella, there is no reference on that document as to the

fact that -- as to where it is being transmitted. It simply says: Interpol Washington telegram of August 8, 1975.

MR. GALLINA: I will submit a copy of the French -- of the manner in which it arrived at the Police Judiciere on the 9th of August 1975. It is the same number 1256 on the bottom of it.

MR. DEPETRIS: All right, fine.

THE CLERK: Which one is this, 19406, page 2?

MR. GALLINA: That is correct.

I would ask that this be appended to it, the French, so we can see the --

THE COURT: Mark it.

THE CLERK: Two page document 19046 -- 19046, page 2 marked Defendants Exhibit as in Eleanor for identification.

(Document referred to was received and marked Defendents Exhibit E as in Eleanor for identification.)

MR. GALLINA: You can understand, your Honor, the way we got these documents was to get copies of documents from the Sengalese court. What happened here is we have two copies of this telegram. We have the original in English which was sent to Dakkar, and then when it reached Dakkar it was translated

into French for consideration by the Sengalese appellate court. And what we did was we translated the French version that was considered by the court for purposes by this court in case they wanted to consider what the Sengalese court considered in its original comment. Also we have a copy of the English version. So you have no copies of both your Honor, that which was translated to the French court and the copies of the original English. The original English here I believe could also be appended to that same exhibit. It is a two page document. And it clearly states on it in this telegram on the top of it, Telex Washington, and it indicates what the Washington number is.

MR. DEPETRIS: Where?

MR. GALLINA: It has an urgent stamp on it. And then it goes Interpol Dakkar, Dakkar, urgent, urgent, urgent, and it is in English -- the original which was originally sent, by so by my submitting your Honor, the translated version -- what I am giving your Honor is the translated version of what was submitted to the Sengalese court. So you have both the original and the translated version to the Sengalese court --

MR. DEPETRIS: Before you mark that I would like to know what that is because it is not the same

as the other copies you are attaching to it.

THE COURT: Well, show them what it is.

MR. DEPETRIS: Your Honor, I do not know that this is the same as the other documents that this is going to attach to because the language in here is not the same language that the Berlitz translation service translated back into English.

MR. BRENNER: The reason for that your Honor is what happened is that Interpol Washington sent a Telex to INterpol Dakkar. Some of the words in that Telex are apparently in code. The word "expulsion" appears as "besud". In any case a translation of that with the words replacing the code was submitted in French to the Sengalese court, and their opinion reflects that they received it. When we got the document, the French translation back, we didn't realize that it was a translation of that coded Telex so we submitted it to Berlitz and had them translate it. That is why there are changes in the wording. But a common sense reading of it can only indicate it is in fact the same document.

MR. GALLINA: I just want to correct you on the coded word which was not expulsion but was the extradition word.

It says in the original document:

"If your Government pursuant to your own sovereign prerogative decided to expel Orisini rather than to Bursa ..." and then Bursa was changed and considered by the court in Senegal to mean to extradite.

I presume in their conferences between Interpol and Dakkar, and our agents there or representatives there, they defined the word Bursa to mean to extradite.

That would seem to be the only word that would be appropriate --

MR. DEPETRIS: I have no knowledge as to the translation or any knowledge of any reference which Mr. Gallina is making.

MR. GALLINA: Well, you have the original in any case.

THE COURT: It will be taken in its proper context based on what the other telegram shows.

Will you have that marked.

MR. GALLINA: I believe we have attached that to the last -- it should be attached or stapled to it.

THE COURT: Have you attached it?

MR. GALLINA: Yes.

THE COURT: Have we marked it yet?

THE CLERK: Yes, Judge, that is E as in Eleanor.

Or I, Mr. Gallina.

MR. GALLINA: Now the next document is a copy of the Sengalese Law Number 71-77 of the 28th of December 1971.

MR. DEPETRIS: Your Honor, to this particular document I would object. It is totally irrelevant to the proceedings before your Honor.

The Government has never claimed that Dominique Orisini was extradited by the Government of Senegal. This particular document is -- apparently is the Sengalese law regarding extradition and I would object to it on the ground it has no relevance to this proceeding.

MR. GALLINA: Well, in view of the fact that the government agents testified that they did not know whether he had been extradited and they feigned ignorance concerning the results --

MR. DEPETRIS: I object to the use of the word "feigned" --

MR. GALLINA: The same way as you used the words pseudo-alibi I use the word feigned.

THE COURT: I will grant the position taken by the Government, and that will not be received in connection with this particular hearing.

MR. GALLINA: As to 39, your Honor, this is

the decision of the Court of Appeals in Dakkar of the 23rd of August 1975.

MR. DEPETRIS: I would also object to the introduction of that document. It concerns the extradition proceeding. The Government does not claim Mr. Orisini was extradited and therefore it has no relevance to this proceeding.

THE COURT: Objection is sustained The document is not to be received.

(continued next page)

MR. BRENNER: Your Honor, may I beheard for one moment?

What I was going to say your Honor, is that the relevance of this document shows that Mr. Orsini was in fact ordered freed by the Court. We are not introducing it for any other --

THE COURT: I think the decision shows that.

MR. BRENNER: That is the decision. That is what we are asking your Honor to receive, the decision of the court, which shows that the court directed that Mr. Orsini be free. We are submitting the Court's opinion.

MR. GALLINA: It will collaborate Mr. Orsini's testimony which your Honor is going to hear.

THE COURT: Do you have anything further?

MR. DE PETRIS: Can I have just a moment to look at the document?

MR. GALLINA: In other words, I will make an offer of proof, your Honor, that Mr. Orsini will tell you that he was ordered freed. And he was freed in effect, and he went into the custody of his attorney --

THE COURT: I think we are well aware that this is what the Court ordered done.

MR. GALLINA: And that the subsequent abduction of Mr. Orsini, and the manner in which it was done, the

surreptitious manner in which it was done, the way he was hidden in the basement of police headquarters and the manner in which he was asserted out of the country by people who did not allow ordinary government representatives or attorneys to visit with him or see him is evidence that these people were acting on the behalf of the Americans

MR. DE PETRIS: Your Honor, the Press is not here so we do not believe it is necessary to continue to make these same statements and allegations that were made --

THE COURT: He always likes to give us a little extra.

MR. DE PETRIS: -- for the last thirteen months he has been making these allegations and there is nothing in the record to support anything he is talking about.

MR. GALLINA: Common sense supports many things in this area.

MR. DE PETRIS: I would still object to the document.

THE COURT: I will receive the document on behalf of the defendant. Mark it.

MR. GALLINA: Your Honor, I do not seem to have a second copy. If I may have the opportunity to deem

it marked -- make a copy of it --

MR. DE PETRIS: I would prefer that Mr. Gallina take my copy so that the documents do not get lost somewhere in between.

MR. GALLINA: All right.

THE COURT: We have marked that document. That was "A".

Yes, that is the original you have there.

Anything else?

MR. GALLINA: No, I don't think so your Honor.

THE COURT: The Court has the filed copy of the deposition of Mr. Marie Appelino Serge.

Mark this on behalf of the defendant for the purposes of this hearing.

MR. DE PETRIS: I don't know whether your Honor is going to want to view the videotape of the deposition while you are examining the interpretive translation of testimony. If so, Mr. Gallina, I assume we will have to provide your Honor with a videotape television or whatever --

THE CLERK: Deposition of Marie Appelino Serge taken September 1, 1976 marked defendant's exhibit F for identification.

(Deposition referred to was received and marked Defendant's Exhibit F for Identification.)

THE COURT: Now all of these have been marked for identification and you intend to use them in connection with this hearing with your findings of fact, is that true?

MR. GALLINA: Yes.

THE COURT: Well, they should be marked in evidence rather than for identification.

MR. GALLINA: I will submit them into evidence.

MR. DE PETRIS: It is with respect of "A" through "E" the Government would object on the grounds of relevancy. Other than that the Government would stipulate they are accurate translations.

THE COURT: On behalf of the defendant we will receive them in evidence. And the clerk will so mark each of these exhibits that you have received thus far.

MR. DE PETRIS: The Government has no objection to the offer of defense exhibit "F".

THE CLERK: Defendant's Exhibit "A", "B", "C", "D", "E", and "F" previously marked for identification received in evidence.

(And the documents referred to herein prevsiously marked Defendant's Exhibits "A","B","C","D","E", and "F" were now received and marked Defendant's Exhibits "A","B","C","D","E", and "F" respectively in evidence.)

THE COURT: All right, Mr. Gallina.

MR. GALLINA: My last request your Honor is to have the defendant Orsini to testify.

I would call him to stand now in view of your Honor's previous ruling.

THE COURT: Do you wish to have him testify? Are you ready now or should we have a short recess?

MR. ORSINI: Thank you your Honor.

(A short recess was thereupon taken at 3:30 o'clock)

(Continued on following page)

D O M I N I Q U E O R S I N I , called as a witness, having been first duly sworn by the Clerk of the Court, through the interpreter, testified as follows:

MR. GALLINA: May I proceed, your Honor?

THE COURT: You may.

DIRECT EXAMINATION

BY MR. GALLINA:

Q Will you tell us your full name, please?

A Dominique Orsini.

Q And your date of birth?

A February 14, 1923.

Q Where have you been living prior to living in the United States.

A Valle Hermoso.

Q Where is that?

A Province of Cordoba, about 100 kilometers from Buenos Aires.

Q In August of 1975, were you on a flight, Air France going to France?

A Yes, on the 6th or 7th of August.

Q Who was accompanying you, if anybody?

A My wife and my two children.

Q And what was your wife's name?

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A Maria Elena.

Q And your children's names?

A Eliana and Enrique.

Q Where was your final destination?

A Nice in France.

Q Did there happen to be a stopover in Dakar, Senegal?

A Unfortunately, yes.

Q Will you tell us what happened from that point on?

A Yes.

Q I will allow you to please just tell us as best you can recall from the beginning to the end what happened during your whole stay in Senegal.

A Well, the steward told us that there would be one hour's stopover in Dakar and all the passengers were supposed to get off the plane.

Since I was at the back of the plane, I was one of the first to get off. And since I needed to go the men's room, I did in fact go to the men's room.

I returned to the stairs, and there must have been six or eight police officers there dressed in uniforms and bearing arms. They asked me to go with them. I asked them where, to the office, they were supposed to

keep me there for 10 or 15 minutes.

When it was one hour later, when I heard that the plane had started, I asked why I was still being held. I started to scream.

At that point they took me to the headquarters. When I arrived at the headquarters I asked, I asked to speak to the French consul by one and I was refused.

Then I -- they started questioning me and I was told, like that, that a telegram from Interpol had requested that I be arrested as an alleged narcotics trafficker and gems, trafficker. That's what the telegram stated.

After these periods during which I was questioned some individual arrived who spoke in English. He was a rather small person. He was wearing a very colorful shirt.

He spoke to the commander, to the chief and left again. He must have come back about a half hour or three quarters of an hour later. He again spoke to the commander or the chief.

After that, surprisingly enough, they had -- I realized they had kept the five suitcases, the suitcases of my wife and my children and everything was there. I

was asked for the keys. It was my wife who had the keys and she had already continued on the trip.

I said that my wife and children had been allowed to continue without their possessions and asked them why and they didn't say anything.

They had a locksmith come in and they opened the suitcases. He was not actually unlocking the suitcases, but he had to break the lock on the suitcases.

During three hours they checked everything, in detail and they didn't find anything.

The following day I was taken to the court and was asked a few questions again and I again protested this detention. I asked again that I be supplied with a lawyer or that I be allowed to see the French consul. I was refused.

On Saturday I was taken to prison in Dakar. On Sunday, I was visited by my brother, my wife and a lawyer who had come but my wife wanted to remain -- which I was arrested, she wanted to remain but since she didn't have a visa, it was necessary to have a visa for the Africans but they had her continue on the trip.

She left my children with her sister-in-law and on Saturday they were back in Dakar. I explained my case to the lawyer who filed a request for my release.

I was to appear in court on August 20th, and on August 20th because the court there is made up of a Judge with two assistants, after they heard the prosecutor and the lawyer, they said that they would render their decision in 48 hours.

It was not the decision, the decision did not come in fact after 48 hours but rather in 72 hours. And the Judge in fact ordered that I be released.

He ordered that I be released immediately, that I be given back my passport and all my personal effects that had been seized. At the point when my release was ordered, I--that's when it began, I turned around.

I turned around. The courtroom is a rather big courtroom and at the door I noticed somebody who is watching me and then leave. I would be 90 per cent certain that this individual was Mr. Pocchichio, an American agent, whom I met later on, who came along with me.

So I was speaking to my brother, to my wife, the lawyer was still engaged in talking to somebody. The lawyer then said to me, "I am going to go to the Court Clerk to ask permission to have a guard come with me to my car. We are going to go to the jail because it is there that I have to sign for your release."

He said "the Americans are going to attempt

to kidnap you."

This is what Mr. Waddy, who was my lawyer, told me. Waddy and myself went in the lawyer's car and upon arrival in the prison, I was told that I was not in fact free, that I had to wait for the warden who was not there.

My lawyer, that is to say, Mr. Waddy, insisted that that -- he be shown a detainer if there was in fact a detainer. They didn't show anything.

So Mr. Waddy told me he was going to go to the Ministry of the Interior to see what was going on.

After he left, five minutes later, a car with police officers arrived where there was the same chief, or commander that had been present when I had been arrested at the airport.

He told me that I had to follow him. I said I have been released, I have no reason to follow you. At that point the warden of the prison arrived and told me, "You must follow this chief."

I said, "I am waiting for my lawyer to return and any way --"well, I started screaming and my wife did also and then they started shoving both myself and my wife.

When I saw that my wife was practically on the ground, I said, "Fine, I will follow you." We left

the prison.

At that point I saw a black car which was following us.

As far as I am concerned that was an American, in my opinion, as far as I am concerned.

MR. DE PETRIS: Objection.

(Continued on next page.)

RP fls.

A (Continuing) At that point, I was kept incommunicado, kept and guarded by four guards.

I wondered what was going on. I had already been released. I didn't see anybody for the entire Saturday.

On Sunday my brother was able -- he was able to send me two bottles of water and two bottles of Coca Cola, and there was a small message wherein he mentioned that I have spoken to Waddy, and Waddy said the Americans going to attempt to transport you at 4:00 o'clock in the morning at which time there will be a plane of PanAmerican Airlines, at 4:00 o'clock in the morning, there would be an airplane.

I was going crazy in there. That's all.

And the day went by. Twenty-five minutes to 3:00 there was a clock there, at that time somebody arrived and called: Orsini, Destination American; meaning I was leaving for America.

So there was four guards who had been guarding me and maybe six or eight other police officers came into the scene.

I started to resist. I threw myself on the ground.

They picked me up. I nevertheless was able to lay down on the ground.

At one given point, somebody pushed me and

I fell on a glass door.

I opened up my wrist, absolutely opened. A great deal of blood was running. A lot of blood.

And they started calling: He's wounded.

They placed a tourniquet and at that point I was able to throw myself on the ground and started screaming: Assassins.

Then by the feet and by the hair I was on the ground. They grabbed me and they pulled me out.

All this time I was being beaten. As we came out, the car was there and there was a police car there. They threw me on the floor of the car and I was being held by one and different ones by the arms and others were holding me with their feet on the stomach and they were kicking me.

I screamed all the time to call my lawyer, to call the French consul.

The placed a gag in my mouth.

At that point I was taken to a First Aid station where they could give me some medical attention.

There must have been eight or 10 police officers.

After that at the head of it there was the Commissioner, the chief, who called constantly on those appliances, the walkie-talkies, and several times I heard the

English language being spoken.

Several times I heard that.

At the First Aid station a nurse or a doctor treated my wound and he said that that could be very serious, that one of the arteries had been cut and that I should be taken to a hospital.

I was taken to the hospital, always with this walkie-talkie, always speaking, always being beaten, since I screamed they were constantly beating me.

The doctor when he saw the wound did not see that any of the arteries had been touched, and then he just stitched the wound and they asked that I be given an anti-tetanus shot and if possible, to give me a blood transfusion.

I asked the doctor to call the consulate, if possible, still at all times screaming.

He answered: The Americans are managing this affair and he left.

After having had the stitches, again constant screaming, constant struggle, constant beatings, they placed the gag in my mouth again and they took me to the airport.

I found myself in the airport.

At the end of the runway, with the plane

already running, I was made to get off and I got off and at that point, I saw the Americans ordering.

It was the Americans who were giving the orders and I was constantly screaming very loud because I was able to see at a distance in the airport and I kept screaming: Mr. Waddy, Pierre, Marie Elena, the French consul.

They attempted to have me go up the stairway and I succeeded in throwing myself backwards.

I fell on the ground and again I was beaten.

They picked me up. The tried to drag me up the stairs by the feet and hair and I again fell back again.

When I fell back I stood up again and again Mr. Boccio hit me very hard on the back of the head and he placed the handcuffs on me.

Then I was totally exhausted and I couldn't carry on any more.

I was placed in the airplane where I was constantly screaming: I am being kidnapped, I am being kidnapped.

They took me to the end, to the back of the plane.

When I arrived at the back of the plane, there was somebldy else there, because there was another one, later on I found his name was Colliers, who spoke French.

He told me they were going to give me a shot in order to calm me down.

I screamed that I didn't want a shot, that I had already enough injections because they had given me the anti-tetanus shot for the wound, but regardless of that, they rolled up the shirt sleeve and somebody came, a doctor, and they gave me a tiny little shot that was wrapped in some cotton wool and they gave me shot.

They placed me then between Mr. Colliers and Mr. Biccio with the handcuffs that were hurting me.

Inspite of the fact that they were hurting me, they placed the safety belt on me and continued on.

When, in a little while, I felt the effects of the medication.

Mr. Colliers said: Why did you attempt to commit suicide?

I said: Suicide? I have two children that I love very much. You know perfectly well what happened at that police station.

Mr. Colliers was seated next to me and I said: Since you speak French, would you please explain to me why you are kidnapping me?

And he answered: We have enough money for that.

At that time we were traveling in tourist class.

We should have in fact been traveling in first class because -- but because the plane was full, we had passengers taken off so that we could make this trip.

We arrived here. We didn't clear any immigration or anything. And I arrived here and place in an office and that's when, at 2:00 o'clock in the afternoon, I appeared before your Honor.

In spite of the fact that I had been told that I should have medical attention, I was taken before a doctor only 48 hours after, at the M.C.C.

Mr. Fields told me on arrival I would be treated by a doctor as soon as I arrived but nothing was done like that. Nothing happened.

Q Now, Mr. Orsini, when you were released by the Court, you then went with your attorney to the prison to pick up your documents; is that correct?

A And to sign the release, which is mandatory.

Q When you were there you were taken to police headquarters by the police; is that correct?

A Within the prison.

Q That's correct.

A From the prison, when I became aware that my wife was being shoved around, that's what I explained.

The lawyer had left for the Ministry of Interior and at that point I said: All right, I will follow you.

The constantly told me that it was just a formality that there were forms to be filled out at the other side.

Q In fact you were taken to police headquarters; is that correct?

A And in secret being guarded by four police.

Q Now, you were taken to police headquarters; is that correct?.

A Yes.

Q The police commissioner; is that correct?

A Police commissioner, yes.

Q Do you understand English or do you speak English?

A No.

Q But do you recognize English when it is spoken?

A Yes.

Q You know the difference, say, from --

A I know the difference between German, and if someone speaks English, I realize it.

During the war we were occupied by the Americans.

Q I see.

Now, when I speak about an American which

you described when you were first arrested as having first come in and speaking to other individuals, other police officers, was he wearing any type of uniform or badge which said he was an American?

A No. He was dressed in civilian clothes, in a colorful shirt and he was chewing -- chewing gum.

He was a short man.

Q Did you recognize him as being American because he spoke English?

MR. DE PETRIS: Objection, leading.

THE COURT: Objection is sustained.

Rephrase that question.

Q How did you recognize him as being non-Senegalese?

A Because when he came in he spoke in English and singing in English. He went to speak to the commissioner at the end of the room.

Q Now, after you had spent this time in jail, and had been released by the Court and were taken to the police, to the police headquarters, were there any English-speaking people there?

A Could you please repeat the question?

Q Do you recall, you told us about the fact that you had been released by the Court?

A That was after having been arrested. That's why I asked you at what point are you referring.

Q After you had been released by the Court, when was the first time and where that you heard any English speaking civilian dressed individuals, if any?

A When I was released --

Q After you were released?

A On the walkie-talkie.

Q Where?

A And at the airport.

Q Where was it that you first saw people with walkie-talkies speaking in English?

A When they took me after I had injured myself and I was placed in the car. It was dark in the car, you understand. It was long and dark inside.

I couldn't see properly especially since I was on the floor with feet placed on me and my mouth had a gag in it.

Q Was the English speaking person holding this portable radio already in this car or truck?

A I don't know. How could I know? I was dragged by the feet and head.

Q All right. Is this when you were taken out of police headquarters and put into the truck; is that

correct?

A Yes.

Q And did you observe or hear any English speaking persons anywhere in the vicinity as you were being taken out police headquarters and being put into the truck?

A There was so many people. This is Senegal, after all, there were a lot of blacks and a lot of whites. But I saw white man around.

I was being dragged by the feet and by the hair.

I was screaming, but there were white men. If they spoke in English or not, I don't know.

Q When was it you first heard the people speaking English on the portable radios in the truck?

MR. DEPETRIS: Objection. It assumes that he heard it in the truck. There is no such testimony.

THE COURT: Objection is sustained. You will have to rephrase the question.

Q When you were in the police truck, did you testify previously that you had heard people speaking on portable radios in English?

A I heard it but I did not see the individual.

I heard the English language spoken. Up to that point I had never seen or heard somebody speaking English until the point where I was injured.

The only one that I could say was that short one with the colorful shirt. But in the five or six days I had never heard the English language spoken.

It was after I was released that I heard it.

(Continued on next page.)

BY MR. GALLINA:

Q That is what we are trying to determine, is when was it ! where was it that you heard people speaking English?

A There was such chaos, that in the car English was spoken, and with all the screaming. And the only thing I forgot to mention which is important is this handerkerchief that they tied as tourniquet. When they were giving me the stitches, that I picked up that handkerchief which was right next to me, and I put it in my pocket. In the plane I saw the same handerchief or it seemed to me to be the same handerchief as Collier had.

Q Now you described an individual, a short individual, who was wearing a fancy shirt who was present at the time that you were being treated, is that correct?

Did you see that person at any time after you were being taken out of the police headquarters and being brought to the airport?

A I never saw him again. The only time I saw him was at the beginning. I didn't see him again.

Q All right, Mr. Orisini, when you were first being taken out of the police station when you were injured and when your arm was injured were there any English speaking

persons present in the police station at that time?

A There was so much noise and there was so much chaos, I was screaming, I would be lying if I told you that.

Q You were then taken out of the police headquarters with this wound in this hand, with this fresh wound in your hand?

A Yes.

Q And you said you were then taken to a clinic, is that correct?

A The first aid station. At that point they spoke English. There was somebody who spoke English. I could hear it. There was guards who had their feet on me. I was being held by my arms. But it was constantly that the English language was being used through the radio. I heard in French because I assume they speak French -- it is a French colony. In French they said that we are going to a hospital or to a first aid station.

Q And then did you hear any --

MR. GALLINA: Withdrawn.

Q Could you repeat any of the words that you heard in English at that time?

A The English words that I heard -- I don't speak English. I heard "Yes, okay, okay, yes." There were other words but I do not understand the language.

Q Now, when you went to the clinic or to the first aid station did any of the persons who accompanied you there or who were present there speak English?

A They didn't take me out for -- a person that came in and with a flashlight they examined me. And they said that I can't see him like that. He has to be taken to the hospital.

Q In other words, you were not taken out of the police truck?

A Not at the first aid station.

Q So that we have an understanding here of what kind of vehicle you were in, is this an automobile or a truck?

A It is a truck where there is a bench where 12 -- 10 or 12 people could sit in.

It has a sort of a corridor and then there is another bench. I was on the ground, on the floor that is to say.

Q You say during this period of time, from the time you refused to leave the police headquarters you were beaten -- that is the word you used -- we describe how you were beaten and the various times that you were beaten.

A May I get up? (addressing Court)

I am standing up. When they tell me I have to go to America I say, "No."

So then somebody grabs me by the arms and I push, and I fall on the ground and start screaming.

When I am on the ground there were so many people there that they were all trying to pick me up.

Now when they picked me up they hit me here. They hit me here (indicating). And I was going like that trying to avoid the blows, all the time screaming. At that point I am pushed. I slip. And I fall on the glass pane like that (indicating) and the blood starts flowing. But I was all the time being beaten. I was standing up and beaten, whether I was standing up or on the ground.

Q Were you being beaten with hands or weapons?

A They kicked me too. There were a lot of kicks.

Q Were you hit with any weapons?

A No, I don't think so. I didn't see any.

Q In other words, you were hit or beaten with fists or feet, is that correct?

A And I was injured. I was resisting too because I was screaming, I didn't want to go.

Q How many people would you say were in the truck with you?

A The truck I figure there must have been about 8.

Q About ten?

A About eight, from eight to ten.

Q Approximately how many of them were English speaking, if you can tell us now?

A They all spoke French. They are all poor devils, misery itself, because in the 17 days that I was there I didn't hear any English being spoken. They more or less speak French.

Q I am not talkingabout in the prison. I am talking about when you were in the truck.

A Among them they spoke in French. I couldn't speak to anybody because I was gagged. My mouth was stuffed up. I couldn't talk. And there was very little talk. The words that were spoken were in the front, in the front seat.

Q Where were the ones who were speaking in English?

MR. DEPETRIS: Objection.

THE COURT: Sustained. Don't ask that question.

Q You stated before that you heard English being spoken when you were in the truck, is that correct?

A Yes. And I still claim that they did not stop talking in French or in English during all the trip to the first aid station and to the hospital. And then after leaving the hospital until the airport. There was constant conversation.

Q In English?

In French and in English.

Q And where were the voices in English coming from? What part of the truck?

A From the front, from the driver, the people there. If there were three or four I don't know.

Q So you can't say at this point how many English speaking people were in the truck, can you?

A That there must have been three or four.

Q Did you hear at any time the name Nday?

A It is possible I heard the name.

Q But you don't recall it specifically at this time however?

A No.

Q Now, so that we have it clear, will you tell us where you were taken from when you first left the police headquarters as you can best determine from inside the truck.

A After I was injured?

Q Yes.

A After having dragged me by the hair and by the feet there was all kinds of people around, whites as well as blacks. They placed me in that truck. And the truck had just gotten going. They were speaking in English and in French. And we went as far as the first aid station

After having examined my arm they told me that that could be serious. And then they took me to the hospital. In the hospital I continued to hear, but it never stopped. It continued on.

Q You were then taken to the hospital, is that correct?

A Yes.

Q How long did you stay at the hospital?

A About a half an hour maybe. But I noticed a clock and it was 25 to 3:00. And when -- it was at that time that I was told that I was leaving for America. And I figure I must have left after 25 minutes, probably around 3:00 o'clock. I must have been placed in the truck. And I left from the operating room. I looked at the clock it was 25 to 5:00.

THE COURT: Mr. Gallina, I intend to let you complete this witness this afternoon.

MR. GALLINA: Yes, this is my last question I believe.

A (continuing) After that I don't know at what time I got to the airport.

Q Just one question. How many other persons from inside the truck who were guarding you or escorting you came into the hospital?

A They didn't want anybody to come in. I was

at the door.

Q Oh, in other words nobody came into the hospital with you?

A They placed me on a chair, went in, and at the point the chief was all the time there. They opened the door. They closed the door. And the doctor told him to remain outside because there was no other exit.

Q When you got on the airplane you said you were injected, is that correct?

A Twice.

Q Twice?

A Yes.

Q At the same twice, or just about the same time?

A Two times.

Q In one arm or two arms?

A In the same arm.

Q How soon after you were put on the airplane were you injected?

A A minute. The individual was already on the plane.

Q Now you heard testimony here did you not from American agents who said they waited approximately, oh, 15 minutes to half an hour for a doctor to come?

A One minute after I was injected the individual was on the plane already.

Q In other words -- you say the individual who injected you was already on the plane?

A Yes, he must have been because -- and I even thought that this individual had continued on the trip with me in fact.

Q In other words, the individual who injected you remained on the plane, is that correct?

A It seemed to me. It seemed to me that he remained in the plane because I thought that there were four of them, because there was Mr. Collier, there was Mr. Bocchichio, there was Mr. Fields, and I thought that the one that had given me the injection --

Q Was also on the plane?

A] Yes. And there was also a Black man, very tall, very tall.

Q When you say there was, was hewith them, so to speak?

MR. DEPETRIS: Objection. I will object to the form of the question.

THE COURT: Sustained. Don't answer the question.

Q What did he do to give you any indication that he was with the other agents?

A Because I saw him speaking to the others. They spoke among themselves --

MR. GALLINA: I have no further questions of this witness.

A (continuing) -- and since there was so many people who had spoken English -- all of them.

Q Were any of these fellows that you saw on the airplane, including this tall Black fellow thatyou just described, were any of them present at any time while you were in the police headquarters, or in the clinic, or in the truck, or in the hospital?

A I didn't pay attention to it.

MR. GALLINA: All right, I have no further questions at this time.

THE COURT: Mr. De Petris?

MR. DEPETRIS: Your Honor, if I could have about five minutes with an agent before I begin questioning.

THE COURT: You want about five minutes?

All right.

MR. DEPETRIS: Does your Honor intend to go beyond 5:00 o'clock, because I expect to be quite a while with Mr. Orisini. So if your Honor wanted to adjourn until 9:30 tomorrow morning, or 10:00 o'clock, or whenever your Honor wanted to adjourn to --

THE COURT: Do you want to start at 10:00 o'clock?

MR. DEPETRIS: I do not imagine I will be more than a half hour or 45 minutes. But I understood your H'nor to say that you had a meeting at 5 o'clock. I do not think I will be finished by 5 o'clock or by 5 or 10 after. And I do need five minutes now.

THE COURT: All right, we will adjourn until tomorrow morning at 10:00 o'clock.

MR. DEPETRIS: I would imagine I could finish by 11:00 at the latest your HOnor. And perhaps overnight I can cut it down even shorter.

THE COURT: All right. 10:00 o'clock tomorrow morning.

MR. DEPETRIS: Thank you your Honor.

(At 4:45 o'clock p.m. an adjournment was thereupon taken to Tuesday, September 21, 1976 at 10:00 a.m.)

* * * * *

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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

-against- 74-CR-492

DOMINIQUE ORSINI,

Defendant.

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IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D. N.Y.
SEP 22 1976
TIME A.M.
P.M.

United States Courthouse
Brooklyn, New York

September 21, 1976
10:00 o'clock A.M.

B E F O R E :

HONORABLE HENRY BRAMWELL, U.S.D.J.

DANIEL D. SIMON
OFFICIAL COURT REPORTER

I hereby certify that the foregoing is a true and accurate stenographic [illegible] of stenographic notes in this proceeding.

Daniel D. Simon
Official Court Reporter
U.S. District Court for the
Eastern District of N.Y.

(15)

Appearances:

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EDWARD SMITH, ESQ.

BY: RICHARD M. COOPER, ESQ.
Attorney for Newsweek Magazine

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(The following occurred at 10:30 a.m.)

THE COURT: All right, ready to proceed.

United States against Dominique Orsini.

All right, Mr. Marshal, he is going to testify.

D O M I N I Q U E O R S I N I , called as a witness, having previously been duly sworn, resumed the stand and testified further as follows:

CROSS-EXAMINATION

BY MR. DE PETRIS:

Q Mr. Orsini, you testified yesterday concerning the events that took place between August 6th or 7th, 1975 and August 25, 1975; is that correct?

A Yes.

Q Now, prior to leaving from Argentina to Senegal had you a week previously intended to travel to France?

A Yes.

Q Did you travel to the airport a week previously?

A No.

Q You cancelled your reservation?

A Yes, I cancelled my reservation because it was necessary to arrange my wife's passport, my children's passport, and they weren't ready, so it was necessary for me to postpone for a week.

Q How long had you been living in Argentina?

A Do you mean when I came from Valle Hermoso?

I left Valle Hermoso on July 21st and I arrived in Buenos Aires on the 22nd. And I had planned to depart on the 30th because I expected to be able to arrange all of the papers in one week.

Q Did you meet with an individual in Buenos Aires by the name of Coco Salgado?

MR. GALLINA: I object. This has to do with the charges in the conspiracy and has nothing to do with the Toscanini hearing. It is being used by the Government at this point as discovery. This is a hearing and it is being used as a discovery.

THE COURT: All right, sustained.

Q Were you told by anyone prior to leaving Argentina that you were going to be arrested?

MR. GALLINA: Objection.

THE COURT: The objection is sustained.

Q Mr. Orsini, when you left Argentina did you intend to return?

A No, I planned to settle definitely in France.

Q When you arrived in Senegal in Dakar, you exited the aircraft, is that correct?

A Yes.

Q Did your family also exit the aircraft?

A Well, that is to say, as I explained yesterday,

I was in the back of the plane. The bathrooms were taken up. I told my wife, "While you are getting the children ready I am going to the men's room and I will be right back."

So I went to the men's room. I came right back.

Q So your testimony is that your family did not leave the plane, is that correct?

A That is to say I came back and they had not as yet gotten off.

Q Now, when you were arrested at the airport --

MR. DE PETRIS: Withdrawn.

Q Do you recall an agent by the name of Rhyn Tryal testifying at this trial?

A The one I remember very well is that at the stairs there were quite a number of people, white people, who were talking among themselves. When I was asked to follow them I did not resist in any way.

Q Now, Mr. Orsini, you testified that you don't recall an individual by the name of Rhyn Tryal testifying at this hearing approximately nine months to a year ago? Yes or no?

A No, the plane was full. It was later on that I learned through the telegrams that there had been somebody in the airplane.

Q My question to you is do you recall an agent

by the name of Rhyn Tryal testifying in this courtroom approximately nine months to a year ago? Yes or no.

A I don't remember.

Q Now, once you were arrested at the airport, Mr. Orsini, you testified that there was an individual who once or twice came into the room where you were being held at the airport?

A That was not at the airport. That was already in the police station.

Q And this individual spoke English?

A Spoke English.

Q To whom did he speak in English?

A Came in right away and he was speaking English.

Q To whom?

A He was talking to himself. He came over. He was even singing.

Q So he wasn't speaking to anyone? He was talking to himself?

A He went to speak to the Commissioner, to the Chief. It was a very big office. He came in. He spoke. He said a few words, words that I understand to be English such as, "Good morning"; he came in. And then went over to speak to the Commissioner. They went to the back of the room and thereafter he left.

Q Now, this individual, this Commissioner, he was Senegalese?

A Yes.

b 2/1 Q Did he speak English?

A I don't know.

Q Did you hear the Commissioner say anything in English?

A Yes, sir.

Q To this individual who came into the room?

A He came down, they were whispering to each other, I didn't hear.

Q When this individual came into the room and said, "Good morning," did anyone say "Good morning," back?

A I don't remember if anybody did.

Q Now, at this point had you been struck or beaten by anyone?

A No, no.

Q Now, when was the next time after this particular incident that you heard anyone speak English? Was it the morning that you were to be taken to the airport?

A I started hearing the English being spoken when I was placed in the thing and they were talking through the walkie-talkie because I saw the desperation of many people trying to pick me up and attempting to kidnap me, it was total

chaos.

Q So then the answer to my question is that it was the morning that you were to be taken to the plane; is that correct?

Yes or no.

A The morning when I was already injured and was placed in the car.

Q That was the morning that you were going to the airport; is that correct?

Yes or no?

A To come here? I am a little confused because between the arrival and the departure there were 17 days in between.

Q But there was only one occasion during that entire period of time that you went to the airport; is that correct?

A Yes.

Q And that is the first time you heard English after that time in the Commissary?

A Yes, through the equipment.

Q Now, did you see the individual who had the walkie-talkie in his hand?

A No, I couldn't see because I was flat on the floor with feet on top of me and it was very dark.

Q Now, you testified that the day before you were taken from the jail a message was smuggled into the jail to you; is that correct?

A Yes.

Q And that message indicated that you were to be taken to the United States?

A Yes, that they were going to attempt to kidnap me, that there was a Pan American aircraft which was departing Dakar at four o'clock in the morning.

Q Mr. Orsini, were you tortured by anyone during this period of time in Senegal?

A Tortured, just hit with the hand, yes.

Q Were you tortured?

A Yes, I believe so.

Q What do you mean --

A Hit.

Q What do you mean by tortured, that someone hit you?

MR. GALLINA: Objection, argumentative. He has answered it.

THE COURT: Overruled, I will permit him to answer it.

A Yes.

Q So there were times on the morning that you were

being taken from the jail that you were hit with the hand?

A With their hands and their feet, I was being hit when I arrived in here, I was hurt all over.

Q Yes, I understand it.

Did you have any marks on your body when you arrived in the United States other than the cut on your wrist?

A I asked her for medical attention because my ribs hurt, I asked that the prison where I am lodged to be checked, but up until now I have not been checked.

Q Did you have any bruises on your body when you arrived in the United States?

A I don't know, maybe I had bruises.

Q You don't remember?

A All I know is that I ached.

Q But you don't recall whether there were any bruises?

A I don't remember.

Q Now, the individuals --

A My hands hurt so much that I --

Q The individuals that you claim hit you or kicked you, were they Senegalese?

A There must have been there, there were so many people, there were Senegalese, I don't know if there were any others.

Q The people that were hitting you and kicking you, allegedly, were these individuals in uniform?

A There were uniformed people and people in civilian clothes.

Q Now, the individuals that were hitting you, did they speak to you at all?

A I don't believe so, there was so much noise, I was screaming so much, I was screaming, I did nothing but scream, and furthermore I knew that my wife was outside watching; I wasn't even able to check whether my wife was there or whether my brother was there.

Q Mr. Orsini, did the people that were hitting you speak to you; yes or no?

A All I heard was my own screams, I heard myself screaming.

Q Mr. Orsini, had you been hit or kicked up until the time the police came into the jail to take you out of there in the early morning hours of August 25th?

A Not the only time, I was shoved around when I followed the Commissioner, they even shoved my wife around, after which I said, "O.K., O.K., I'll follow you."

Q This is when the police rearrested you after you had been released by the Court; is that correct?

A Yes.

Q Were you struck at that time or kicked at that time?

A No, they kicked me at two o'clock in the morning when I was told I was to leave for America and when I threw myself on the floor, my first reaction was to throw myself on the floor.

Q Now, Mr. Orsini, so up until approximately two o'clock in the morning on August 25th you had not been kicked; is that correct?

Yes or no?

A Not before.

Q Now, when the police came on the morning of the 25th to take you from the jail, did you resist them from taking you from the jail?

A I resisted in a sense but only by throwing myself on the floor because they were trying to drag me by the arms.

Q And you resisted?

A Resisting, just throwing myself on the floor, I didn't punch anybody and I didn't kick anybody.

Q And then they were trying to pick you up by the arms, is that correct, and by the legs?

A And by the head, by the hair.

Q And it was at that point that these police

officers kicked you; is that correct?

A That is correct.

Q And they then dragged you from the jail; is that correct -- or carried you from the jail?

A Yes, by the hair and by the feet they took me out, I didn't walk, they just dragged me by the hair and the feet.

Q And you had cut your wrist in the jail when they were trying to drag you out of the jail; is that correct?

A In the room where I was being kept, in that room.

Q Did they take a piece of glass and slit your wrist?

A No.

Q Did you fall into something and cut your wrist?

A On the pane, there was a door where a pane was, with a glass pane, and it got broken, it was broken.

Q And you cut it on that pane; is that correct?

A Yes.

Q And this was during the time that you were resisting being taken from the jail; is that correct?

A Yes.

Q Now, after they realized that you had cut your wrist, they took you to a First Aid Station; is that correct?

A They placed a tourniquet, I continued screaming and they continued beating me. I was on the floor and that is at the point at which they took me out and they placed me on the floor of the thing.

Q Did you know at that time that you were being brought to the United States to be prosecuted for narcotic trafficking?

A All I was thinking about was my freedom, what I was disturbed about was being transported in secret.

Q Mr. Orsini, yes or no, at the time that the police came to the jail to take you out, did you know that you were going to be brought to the United States to be prosecuted for narcotic trafficking? Yes or no.

A I doubted it.

(Continued on next page.)

Q Did you know that you were going to be brought to the United States at that time?

A I was hoping for Senegalese justice.

Q Yes or no, did you know at that point when the police came to the jail that they were going to take you and turn you over to the Americans to be brought to the United States: yes or no.

A Yes, yes, because that is what they came in saying, they said, "You are leaving for America."

Q During the proceedings in the Court in Senegal, did you learn that you were charged in the United States with narcotic trafficking: yes or no?

A Narcotics and gems.

Q So then at the time that the police came to the jail, you knew that you were charged in the United States with narcotic trafficking; is that correct?

Yes or no?

A Yes.

Q Now, when you were taken to the First Aid Station someone who came to look at your wrist told the police, the Senegalese police, to take you to a hospital; is that correct?

A Yes.

Q And then you were taken to the hospital; is that correct?

A Yes.

Q And at the hospital the doctor said there was no artery cuts and he stitched up your wrist; is that correct?

Yes or no?

A Yes.

Q And from the hospital you were taken to the airport; is that correct?

A Yes.

Q When you arrived at the airport and you exited from the van, were you resisting the Senegalese police: yes or no?

A No, I didn't resist.

Q You didn't resist at all; is that correct?

Is that your testimony?

A I resisted by throwing myself again on the floor, I didn't want to get on that plane, but I don't know thatyou can call that resisting.

Q When you were being carried up the ramp after the handcuff was on one of your wrists, were you swinging your arms?

A After I had been handcuffed?

Q On one arm.

A No, they placed both -- I was hit, at that point I was practically fainting, they took me up, actually.

Q Now all right.

Prior to the handcuff being placed on your wrist, were you struggling with your arms and your hands and your legs?

A I was attempting to get loose, I screamed.

Q In attempting to get loose, did you strike any of the Senegalese police officers, either intentionally or by accident?

A No, no, not at no point.

Q Now,when you were carried up the ramp, was that when someone struck you on the neck, the back of the neck?

A Mr. Bocchichio.

Q You saw him hit you?

A Yes, because he was holding me, he is the one who made me go up and he is the one that sat next to me in the plane.

Q Did you see him strike you in the back of the neck?

A Yes.

Q Was he behind you?

A He was on my side.

Q He was on your left side?

A On my left side because the stairs were here (indicating),and he was there (indicating), he was next to me.

Q Which hand did he strike you with?

A I don't know.

Q But you saw him swing his arm and strike you on the back of the neck; is that correct ?

A And when I received the blow I looked up to him and he had hit me.

Q So your testimony is that Agent Bocchichio was lying?

MR. GALLINA: Objection, your Honor. It is not for the witness to characterize anybody, it is from the facts.

THE COURT: I will sustain the objection. Don't answer the question.

Q Had you ever seen Agent Kohler prior to arriving at the aircraft?

A No.

Q Had you ever seen Mr. Fields prior to arriving at the aircraft?

A No, that is to say down below, outside the airplane?

Q But it was only after you arrived at the airport; is that correct?

A Yes.

Q Did any of the Senegalese speak English?

A It seems to me one of them did, which I think was the chief of Interpol or whose position was Chief of Interpol.

Q Did he have a walkie talkie in his hand?

A Yes.

Q Now, was he with you during the times that you were being transported from jail to the First Aid Station and to the hospital: if you know.

A Yes, he was in front.

Q Now, when you went up the ramp and entered the aircraft, were you still screaming?

A Yes, I was, yes, I screamed all the time. I no longer had the gag in my mouth so I was screaming.

Q And you were carried to the rear portion of the aircraft; is that correct?

A Practically at the end, three or four feet, there were three or four seats behind me which were taken up by other passengers.

Q And after getting to the area where your seats were, were you placed in the center of the three seats?

A No, it was there that actually -- it was before I was seated that I received the injections, in spite of my protests and screams.

Q Concerning the injections, is that what youare

talking about?

A Yes, I kept saying "No injections, I don't want to be injected."

Q Were you still screaming?

A Yes.

Q Wereyou still struggling?

A No.

Q You were just screaming?

A I screamed, "I am being kidnapped, I am being kidnapped," I said that to the passengers -- so that the airplane commander because I found that this was out of the ordinary, everything that was happening, and I became more -- I had more energy than I ever thought that I would be able to muster.

Q You had recovered from the blow on the back of your neck at this point?

A Yes, that must have lasted no more than 15, 20 seconds.

Q I see.

A At that point I didn't even continue to resist, I was tired, I was totally exhausted.

Q Now, after you were seated on the aircraft, did there come a time when the handcuffs were removed from you?

A No, not at all, never, they never took them off.

I even complained that I hurt.

Q The handcuffs were never removed from your wrists; is that your testimony?

A Yes. I did the entire trip with the handcuffs on.

Q When you arrived in the United States, was there a doctor at the airport to meet you?

A No, in spite of Mr. Fields promise.

Q It is your testimony that there was not a doctor at the airport; is that correct?

A No, they took me through a tunnel, there were two other police cars, and they brought me here.

Q Isn't it a fact that you said that you didn't need any medical treatment when you arrived in the United States?

MR. GALLINA: I object to this line of questioning, counsel is asking questions in good faith or is he playing games?

THE COURT: Overruled, I will permit that question.

A I insisted on seeing one, I ached, and that was bleeding, my hand.

Q And you didn't see a doctor?

A I didn't see him even when I arrived here, we

arrived here at around 10:00 o'clock in the morning and I asked, I asked to be treated and they didn't treat me here.

Q Did you tell your lawyer that?

A What?

Q Did you tell Mr. Cutler that you didn't receive any treatment?

A Yes.

(Continued on next page)

Q If you had any bruises on your body, did you show Mr. Cutler those bruises when you arrived here in the United States?

A I was so confused, I didn't know where I was. The least important was whatever bruises I might have.

MR. DE PETRIS: I have nothing further, your Honor.

THE COURT: O.K. Redirect?

MR. GALLINA: Just a few questions.

REDIRECT EXAMINATION

BY MR. GALLINA:

Q When you were taken out of your cell at the Police Headquarters at two o'clock in the morning, did anybody show you any official documents authorizing your removal, any warrant or any type of documents at that time?

A They didn't show me anything, they said, "You are leaving for America." I threw myself on the floor. I didn see any documents.

Q Did they tell you that you were under arrest or that you had violated any laws or what you had done wrong?

A I was being concealed, I was not able to see a lawyer, I was not able to see my family, I kept asking the guards what was going on and nobody answered me. I was being hidden.

Q Since the two days, since you had been taken from the prison by these special police of the Prosecutor, were you allowed to see anybody or visit with your lawyer or your family or get any messages out of the prison?

A When I was being hidden?

Q Hidden, yes.

A No, sir, just that small piece of paper that came in with two bottles of water and two bottles of Coca Cola.

Q Now, when the people who beat you with their feet did so, did they do it with bare feet or with shoes on their feet?

A They wore, they all wore shoes, they wear heavy shoes over there.

Q Did they kick you hard or softly or how did they kick you?

A There was so many of them that they even got in each other's way so the blows were rather -- you understand, they were pushing each other.

Q Were you kicked many times or a few times?

A Many.

Q Were you hit with fists many times or a few times?

A I was being hit constantly without stop, all the time. It must have lasted 10, 15 minutes and all the

time after I was taken out I was constantly being hit.

Q When you arrived at the foot of the airplane, did anybody there show you any documents or any type of legal document or letters, et cetera, explaining the authority for taking you on that plane?

A No, no documents.

Q From the first time you were seized and hidden until the time you were put on the American plane, did anybody ever show you an extradition or expulsion order?

A No, no, no papers.

Q Prior to your being released by the Court or set free by the Court in Senegal, had your attorney explained to you what it was necessary for you to be extradicted or expelled to the United States, what was required at law?

A Yes, he had explained the Senegalese --

MR. DE PETRIS: Objection, there is no relevancy.

THE COURT: There is no relevancy even if he knew. It isn't what he knew, it is what happened.

MR. GALLINA: I will connect it with the next question.

THE COURT: Even if he knew, there is no relevancy.

The objection is sustained.

MR. GALLINA: I don't offer it for the truth of

the matter but for his state of mind, and my next question will show the reason for it. If your Honor will permit me to follow with the next question.

THE COURT: Ask the next question then.

(Continued on next page.)

fols.

Q Now, were any of the things that your attorney explained to you that must be done in order for you to be extradited or expelled --

MR. DEPETRIS: Objection.

THE COURT: There is no relevancy to that, anyway.

Q Were any of the documents --

THE COURT: Ask another question. There is no relevancy there. We are all aware of this. We are all aware that none of this was done. There is no relevancy there.

MR. GALLINA: Your Honor, it is a conceded fact that there was no expulsion --

THE COURT: It is not a question of it being a conceded fact. It is not the fact that anything of this nature was done.

MR. GALLINA: It is the fact that none of this was done.

THE COURT: Surely.

MR. DEPETRIS: It is a fact that there was no extradition.

THE COURT: We know that. You know that.

MR. GALLINA: Or expulsion, your Honor.

THE COURT: I am sorry?

MR. GALLINA: And no expulsion.

THE COURT: Well, you can interpret any way you wish.

Q But you were never shown an expulsion order?

MR. DEPETRIS: Objection, your Honor.

THE COURT: Sustained. Irrelevant.

MR. GALLINA: Your Honor, I beg to just put on the record my argument that his conduct, which has been drawn out by the Prosecutor on cross-examination that he passively resisted by laying down on the floor -- this is recognized by our law as being a proper conduct --

THE COURT: Well, that is your postion. You can argue that without asking those questions.

MR. GALLINA: I want to show his state of mind was commensurate and correct in accordance with --

THE COURT: You want him to tell you what his state of mind was?

MR. GALLINA: I want to show by --

THE COURT: You want him to tell you what his state of mind was?

MR. GALLINA: I can show the state of mind -- I am trying to show his state of mind by the failure of the authorities to show any documents.

THE COURT: Well, we know that they didn't show.

We have been through yesterday and today on his state of mind. If we don't know it now, I think we might have missed the point.

Q Are you certain that no doctor treated you when you arrived off the airplane at Kennedy Airport?

A I am certain.

MR. GALLINA: All right, I have no further questions.

At this time, your Honor, I would ask --

THE COURT: Wait one minute. Any recross-examination?

MR. DEPETRIS: No.

MR. GALLINA: I would at this time ask for a discovery from the Government of the name and address of the doctor that the Government has argued to this point and has hinted to this point in his questioning, and also has stated through other witnesses, was present at Kennedy Airport at that time treating this defendant.

MR. DEPETRIS: Your Honor, the Government said nothing about this defendant being treated at Kennedy Airport. The questions referred to a doctor being present at Kennedy Airport. Mr. Gallina, if you listened to the questions, might understand what was said.

MR. GALLINA: I would like to know who the doctor was who was present.

THE COURT: Can you give him the doctor who was present at the airport?

MR. DEPETRIS: Yes.

Is Mr. Orsini finished?

THE COURT: Is Mr. Orsini finished? If he is finished, he can step down.

MR. GALLINA: Yes.

THE COURT: Very well.

(Witness excused.)

THE COURT: All right, we will take a five-minute recess, anyway.

(A short recess was thereupon taken at 11:20 o'clock A.M.)

(After recess.)

MR. DEPETRIS: Your Honor, I have had the agent attempt to get the name of the doctor.

I have here what is called a DEA form 7, which is not the voucher but a description of the medical services -- bill for the medical services at John F. Kennedy Airport. And that indicates that Agent Bocchichio had requested apparently on the aircraft that the pilot contact Kennedy Airport to request that a doctor be at the airport. And it indicates Mr. Orsini refused

medical attention at Kennedy Airport after he arrived. Mr. Bocchichio is attempting to get the name of the doctor, now.

THE COURT: All right, you will get him to communicate that to Mr. Gallina.

Now, what further do we have on the hearing?

MR. GALLINA: We have just the display of the videotape. Your Honor, I have somebody from my office attempting to rent some device for the display of that tape. They obviously haven't been able to do it as yet. I told them to try to be here by 11 o'clock.

THE COURT: It is 25 to 12 now.

MR. GALLINA: Yes. But it is a question of renting it, et cetera.

THECOURT: What do you suggest?

MR. DEPETRIS: Well, in terms of since it is a hearing -- while theCourt will have to view the depositions which are -- which were taken for the trial, because of the objections, and to make rulings so that the videotape can be spliced -- in terms of the hearing deposition, Mr. Serge, it is only a hearing and there is no jury --

THE COURT: The record has been made a part of this proceeding of that deposition.

MR. DEPETRIS: Yes, it wouldn't seem that any

objections would really have to be ruled on by the Court in terms of the deposition, itself, I mean concerning Mr. Serge's testimony. Insofar as the trial depositions are concerned, they will have to be gone over prior to being played to the jury because of the fact if your Honor sustains objections then the tape will have to be cut and spliced.

THE COURT: Was a transcript made from the videotape?

MR. DEPETRIS: Mr. Simon can tell you that.

THE COURT REPORTER: Yes, it was made from the videotape of the witness, Mr. Serge.

MR. GALLINA: Then that would be satisfactory.

THE COURT: What would be satisfactory?

MR. GALLINA: That your Honor will be able to consider the testimony from the transcript.

THE COURT: From the transcript?

MR. GALLINA: That is correct.

THE COURT: That the Reporter has made?

MR. GALLINA: That is correct.

THE CLERK: That would be F.

THE COURT: Yes, that is defense exhibit F in evidence.

MR. GALLINA: We consent to your Honor's viewing the tape at your Honor's leisure in your chambers.

THE COURT: All right.

MR. DEPETRIS: I have the tapes available. So whenever Mr. Gallina provides the videotape machine you can do that.

THE COURT: Aside from that, Mr. Gallina, you are resting?

MR. GALLINA: Your Honor, I believe I am. My associate was supposed to be here with certain documents. Except for documents, I am resting.

THE COURT: If there are any documents they can be -- you can stipulate as to them or agree as to them and they can be added into the record of this hearing if required.

MR. GALLINA: Thank you very much.

THE COURT: Mr. Depetris?

MR. DEPETRIS: I have nothing further.

THE COURT: You have rested?

MR. DEPETRIS: Yes, your Honor.

MR. GALLINA: May we approach the bench, your Honor, Mr. Depetris and I?

THE COURT: Oh, yes.

You have been advised already you have to submit findings of fact and conclusions of law.

MR. GALLINA: We have submitted them, your Honor. But we will add to our findings of fact.

THE COURT: And these are to be locked into the evidence and into the record of this hearing.

MR. GALLINA: Yes, your Honor. We will add to our findings of fact and recommendations of law that had testimony which happened in the last few days.

THE COURT: All right.

MR. DEPETRIS: Now that the hearing is concluded I should be able to have my findings of fact to the Court by --

MR. GALLINA: This afternoon?

MR. DEPETRIS: -- hopefully by Thursday morning. I think they should be in.

THE COURT: All right. And Mr. Gallina?

MR. GALLINA: I will -- Thursday morning? Today is Tuesday.

THE COURT: Thursday morning.

MR. DEPETRIS: I work nights.

THE COURT: You will deliver them to Mr. Weinberg.

MR. GALLINA: I will attempt to do it by Thursday. I am not sure if I can have it by the morning.

THE COURT: Anything further?

MR. GALLINA: Your Honor, I do want to advise the Court that there may be a disposition in this case after your Honor decides the hearing.

THE COURT: I see. All right, you may go, Mr.

Orsini. Thank you.

If you wish to speak to him, you may.

MR. GALLINA: May I just speak to him?

THE COURT: Yes.

* * *

Received on 3/2/77 copy of Appendix
David Dubota
ausa, EDNY.

Ten copies of the enclosed Appendix were delivered to the Clerk, U.S.C.A. 2nd Circuit 2/25/77

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